Global Investigations Guide: Eurasia

Hogan Lovells

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Introduction

It is with the utmost pleasure that we, as members of Hogan Lovells' team of investigation and compliance practitioners in Russia, CIS and Eurasia, announce the release of the first edition of the *Eurasian Investigations Guide*.

This *Guide* represents the outcome of the work of leading practitioners of key post-Soviet jurisdictions in Eurasia and provides general responses to the topical issues related to internal corporate investigations. The intention of the Guide is to offer an insight to the major components of the legal investigative activity in such spheres as anti-corruption, bribery, anti-money laundering and compliance from the perspective of leading experts from across the region.

A special word of thanks goes to Daria Pavelieva, Bella Mikheeva and Alexandra Dmitrieva who undertook the important task of co-ordinating the work of the experts contributing to the Guide, as well as to harmonise style and language throughout the entire volume.

Hogan Lovells' *Eurasian Investigations Guide* is not intended to provide legal advice nor should it replace the advice of counsel. Its aim is to deliver a brief but meaningful assessment of investigative activity and assist in navigating the complexities surrounding these issues.

We hope that the *Eurasian Investigations Guide* will be favourably received by practitioners. We thank you for your interest in this publication.

Best regards

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Cross-border investigation

The usual and well-known challenges of a cross-border investigations, such as language barriers, different cultural and language issues, often contradicting each other local laws, data privacy provisions, compliance issues and enforcement practices, create multiple sets of problems and sensitivities for practitioners faced with the task of conducting it effectively. In Eurasian jurisdictions, there are further unique regional challenges.

Globally and regionally, cross-border investigations tend to be on the rise while businesses everywhere face increased regulatory pressure multiplied by the COVID – 19 pandemic and geopolitical issues. From the start of an investigation, to its completion it is crucial to be aware of the important issues and avoid unrepairable mistakes.

Hogan Lovells *Eurasian Investigations Guide* aims to provide assistance by offering a general overview and best practices of investigations in Eurasia, to help orient those leading or involved with such investigations throughout their life cycle – from the start to its, hopefully, successful completion.

Start of a cross border investigation

Following the assessment as to what exactly has triggered the investigation, usually a whistle-blower's complaint, an external claim, an internal finding, a media publication or a regulatory action, jurisdictional analysis has to be conducted to assess which jurisdictions are likely to be involved in the investigation. It could be that the issue in question is or is likely to be subject to investigation by authorities in a number of jurisdictions influencing how exactly one could structure the investigation.

Right resourcing from the start of the investigation is everything. Often, local in-house legal team has to be supported by outside counsel or other external resources. Given the need to hire the best experts on white collar crime or compliance, it would be recommended to build and maintain beforehand a network of experts in the key jurisdictions, available in crisis situations when time is of the essence, such as dawn raids or investigations carried out by law enforcement authorities.

Understanding the extent to which one may investigate in the respective jurisdiction is equally important, given the existing legislation on classified information, including state secrets, commercial secrets, personal information and its transfer abroad, the breach of which could sometimes trigger criminal liability.

Further, it must be carefully assessed whether early disclosures to local law enforcement agencies are necessary or would be helpful from a strategic standpoint. In most Eurasian jurisdictions, however, such disclosures are uncommon and may create more problems than they solve. In cross-border cases, where many authorities may be involved, there could be a strategic advantage to disclosing information in a certain order. One has to determine as well whether to make disclosures to third parties, including, shareholders, insurance companies, local authorities and other stakeholders.

From the start it is paramount to get the right advice to make sure the investigation progresses in the right direction.

Investigation

The immediate objective of the investigation has to do with the objective to "stop the bleed": to ensure that any potentially on-going criminal or unlawful conduct is stopped. This often includes suspension of certain questionable business operations such as payments or goods deliveries, monitoring certain payment and goods streams or putting certain individuals at least under close monitoring or even their temporal suspension pending the outcome of the investigation in case there are serious reasons to believe that their actions could generate further risks to a company.

Preservation of all information potentially relevant to the investigation, with such measures as issuing a data hold, suspending auto-delete functions and immediately imaging data carriers, is equally important from the start, especially in the context of the investigations involving and FCPA or UK BA elements.

Given the privilege issues related to the need to protect the information, it is normally recommended, especially in the context of the investigation in Eurasian jurisdictions where legal privilege protection faces multiple challenges, as the information could be confiscated and reviewed by the authorities in some jurisdictions, to have external counsel (often with the status of an "advocate") to take the lead in the investigation. This includes generation and storage of sensitive work product.

Observing requirements to classified information, such as data privacy as well as state and commercial secrets is equally important as Eurasian jurisdictions often are quite formalistic in this respect, requiring, for example, express written consents of employees to process their personal information, and imposing stringent liability for breaches. Given the potential legal exposure and complexities, it is strongly recommended that expert data privacy counsel be part of any cross-border investigation team in all phases.

An important issue has to do with the "export" of data to other countries in a cross-border investigation, which should not be taken for granted. This can be particularly problematic if such countries, such as the US, do not have an equivalent level of data privacy protection to the respective Eurasian jurisdictions, which regulation is close to that of the EU. This could require additional protective measures like reducing data amounts or redacting personal information before any data transfer.

Interviews often also raise various legal issues. Each jurisdiction has its own rules and best practices in this regard. If an interviewee is not properly instructed or the interview is otherwise not done correctly, it could lead to evidence being inadmissible in the subsequent legal proceedings.

The end of the investigation

Importantly, the end of the investigation poses the question of whether detailed investigation report should be produced. This is mostly linked to the question of privilege. Even if outside counsel produces a report, it may have only limited protection if it enters into the custody of the company. In the cross-border context, certain authorities may view the waiver of privilege and production of a report as necessary to demonstrate good will and cooperation. There may be then be all sorts of pressures to produce the investigation report, which raises the issue of the form and scope of its release, if any.

Remediation measures addressing weak points identified during the investigation is its most natural result. In some jurisdictions it is important to assess whether the company could face liability and its amount. Remediation can include, for example, sanctioning employees, including termination, targeting legal and organisational weaknesses, assessing internal policies and procedures, including internal investigation protocols, updating companies' records, conducting mandatory compliance and other training, etc. Respective limitation periods have to be noted and observed to make sure, for example, that certain disciplinary measures could be implemented.

For companies operating in multiple jurisdictions, it may be necessary to conform worldwide internal guidelines to the higher legal standard in the home jurisdiction, even though a lower standard may be permissible in local jurisdictions.

Recovery of damages is another important step against the parties liable for misconduct to compensate some of the company's losses, which could be significant, either through civil or criminal proceedings.

Conclusion

The existing regulatory field is getting more and more complex, and sometimes is compared to a minefield. Numerous issues have to be kept in mind and observed when conducting a cross-border investigation, especially in such a diverse region as Eurasia. Issues can arise at every stage in the life cycle of an investigation. Trying to build an effective investigative activity necessitates careful assessment of critical cultural, legal, organisational and business differences and gaps, and understanding the respective methodology. This is what this *Guide* attempts to accomplish addressing, at least initially, the "blossoming complexity" of the Eurasian investigatory landscape.

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Heading the Russian / CIS IWCF (Investigations White Collar & Fraud) practice of the firm, Alexei offers clients the benefit of over 23 years' experience as an accomplished litigator, investigator and compliance specialist.

Alexei handles complex litigation, compliance and investigation matters. He is a recognised authority on cross-border asset recovery and contentious insolvency litigation. Alexei handled numerous multijurisdictional and internal investigations, including matters involving allegations of bribery and corruption under the Russian Criminal Code, FCPA, the UK Bribery Act and other anti-bribery laws. He advised on the set up and management of various compliance systems to leading Russian and international companies. Alexei defended top foreign clients in various regulatory investigations carried out by Russian authorities.

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Heading the Russian Dispute Resolution practice of the firm, Alexei offers clients the benefit of over 20 years' experience as an accomplished litigator and advisor. Alexei has built a strong portfolio of winning complex cases in both commercial and general courts in Russia and in international arbitrations. He is a recognized authority on Russian and international fraud and asset tracing litigation.

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Guide questions

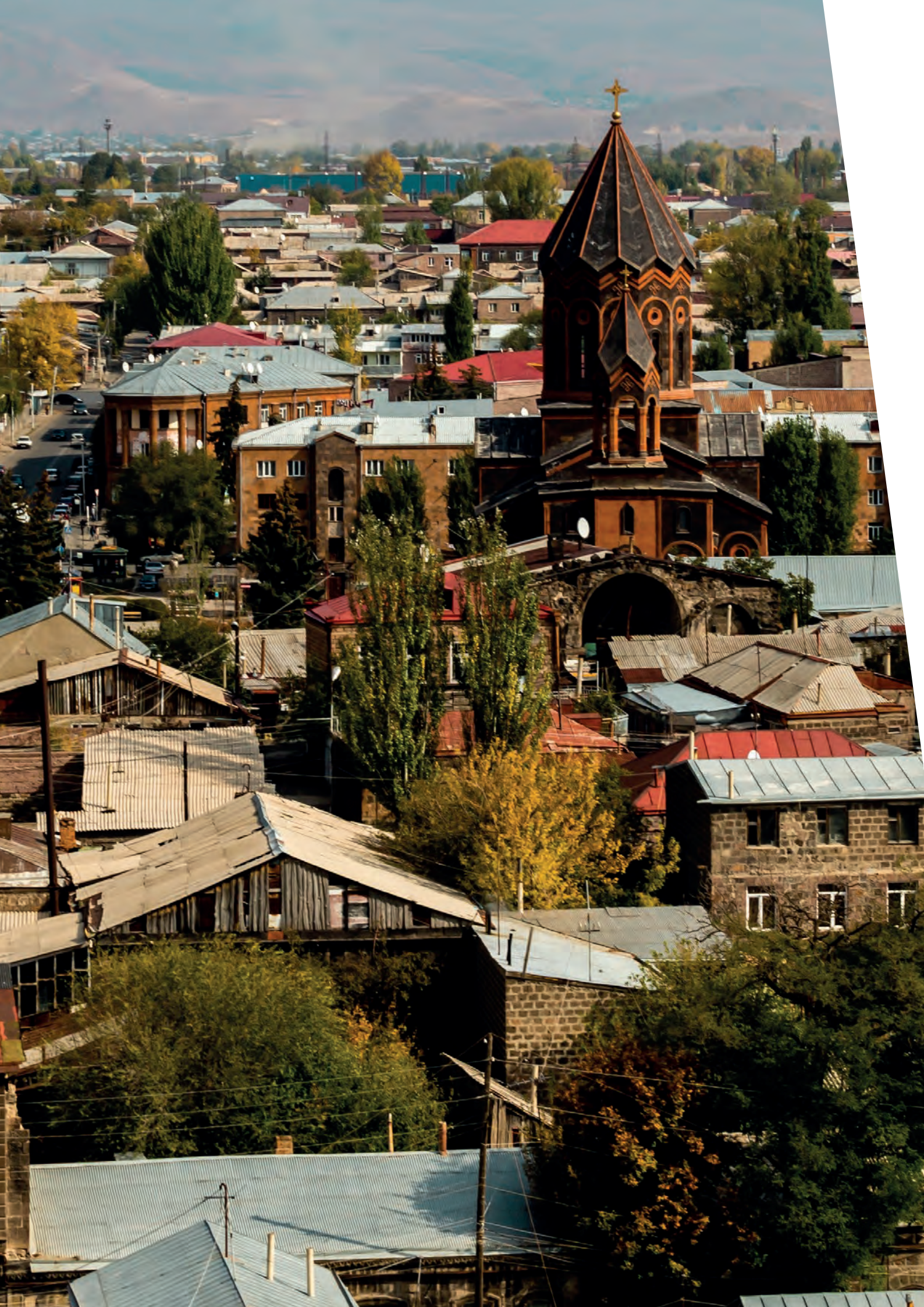
1. What are the laws relating to anti-corruption, bribery, and money laundering in your country?
2. Do the following persons or bodies have the right to be informed, or is the company obliged to inform the following persons/bodies, about an internal investigation before it is commenced? Do they have the right to participate in the investigation (e.g., in interviews)?
    a. Employee representative bodies, such as a works council or union.
    b. Data protection officer or data privacy authority.
    c. Other local authorities.

What are the consequences of non-compliance?

3. Do employees have a duty to support the investigation, for instance by participating in interviews? Is there anything a company can do to require employees to support an investigation (e.g., advance consents)? Can companies impose disciplinary measures if an employee refuses to cooperate?
4. Can any labor law deadlines or statute of limitations be triggered, or any rights to sanction employees be waived, by investigative actions? How can this be avoided?
5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:
    a. Conducting interviews?
    b. Reviewing emails?
    c. Collecting (electronic) documents and/or other information?
    d. Analyzing accounting and/or other mere business databases?
6. Do any specific procedures need to be considered in case a whistle-blower report sets off an internal investigation (e.g., for whistle-blower protection)?
7. Before conducting employee interviews in your country, must the interviewee:
    a. Receive written instructions?
    b. Be informed that he/she must not make statements that would mean any kind of self-incrimination?
    c. Be informed that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee (so-called Upjohn warning)?
    d. Be informed that they have the right to have their lawyer attend?
    e. Be informed that they have the right to have a representative from the works council (or other employee representative body) attend?
    f. Be informed that data may be transferred across borders (in particular to the United States of America)?
    g. Sign a data privacy waiver?

   h. Be informed that the information gathered might be passed on to third parties, including local or foreign authorities?
   i. Be informed that written notes will be taken?

8. Are document-hold notices or document-retention notices allowed in your country? Are there any specific rules that need to be followed (point in time, form, sender, addressees)?
9. Can attorney-client privilege (legal advice privilege) be claimed over findings of the internal investigation? What steps may be taken to ensure privilege is maintained?
10. Can attorney-client privilege also apply to in-house counsel in your country?
11. Are any early notifications required when starting an investigation?
    a. To insurance companies (D&O insurance, etc.) to avoid losing insurance coverage.
    b. To business partners (e.g., banks and creditors).
    c. To shareholders.
    d. To authorities.
12. Are there any other immediate measures that have to be taken in your country, or would be expected by the authorities once an investigation starts, e.g., any particular immediate reaction to the alleged conduct?
13. Is there a duty to self-report the discovered misconduct to prosecuting authorities?
14. If local prosecuting authorities become aware of an internal investigation, would they interfere in it or ask for specific steps to be followed?
15. Please describe the legal prerequisites for search warrants or dawn raids on companies in your country. If the prerequisites are not fulfilled, can the evidence gathered still be used against the company?
16. Would voluntary self-disclosure or cooperation with state authorities help avoid or mitigate liability? What are the requirements to obtain the cooperation credit?
17. Are deals, non-prosecution agreements, or deferred prosecution agreements available and common for corporations in your jurisdiction?
18. What types of penalties (e.g., fines, imprisonment, disgorgement, or debarment) could companies, directors, officers, or employees face for misconduct of (other) individuals of the company?
19. Can penalties for companies, their directors, officers, or employees be reduced or suspended if the company can demonstrate an efficient compliance system? Does this only apply in cases where efficient compliance systems have been implemented prior to the alleged misconduct?
20. Please briefly describe any investigation trends in your country (e.g., recent case law, upcoming legislative changes, or special public attention on certain topics).



Armenia

Contributed by Concern Dialog Law Firm

	Corporate liability	Public bribery	Commercial bribery	Extraterritorial applicability of criminal laws	Adequate procedures defense
Yes		✓	✓	✓	
No	✗				✗

1. What are the laws relating to anti-corruption, bribery, and money laundering in your country?

In the Republic of Armenia, the following substantive and procedural legal acts regulate the sphere of anti-corruption, bribery, and money laundering:

- Armenian Criminal Code (*Քրեական օրենսգիրք*) criminalizes various forms of corruption.
- Armenian Law Against Money Laundering and Financing of Terrorism (Law No. *ՀՕ-80-Ն Փողերի լվացման և ահաբեկչության ֆինանսավորման դեմ պայքարի մասին ՀՀ օրենք*) aims to set up mechanisms for protecting public, financial, and economic security from risks arising as a result of money laundering and terrorism.
- Armenian Law on Protection of Personal Data (Law No. *ՀՕ-49-Ն Անձնական տվյալների պաշտպանության մասին ՀՀ օրենք*) sets general and specific guarantees of personal data protection on the Republic of Armenia.
- Armenian Criminal Procedure Code (*Քրեական դատավարության օրենսգիրք*) provides applicable criminal procedural measures for investigating the abovementioned violations of law.

2. Do the following persons or bodies have the right to be informed, or is the company obliged to inform the following persons/bodies, about an internal investigation before it is commenced? Do they have the right to participate in the investigation (e.g., in interviews)?

a. Employee representative bodies, such as a works council or union.

Not required by law. However, internal acts of a company may require informing employee representative bodies or work unions in case of internal investigations.

b. Data protection officer or data privacy authority.

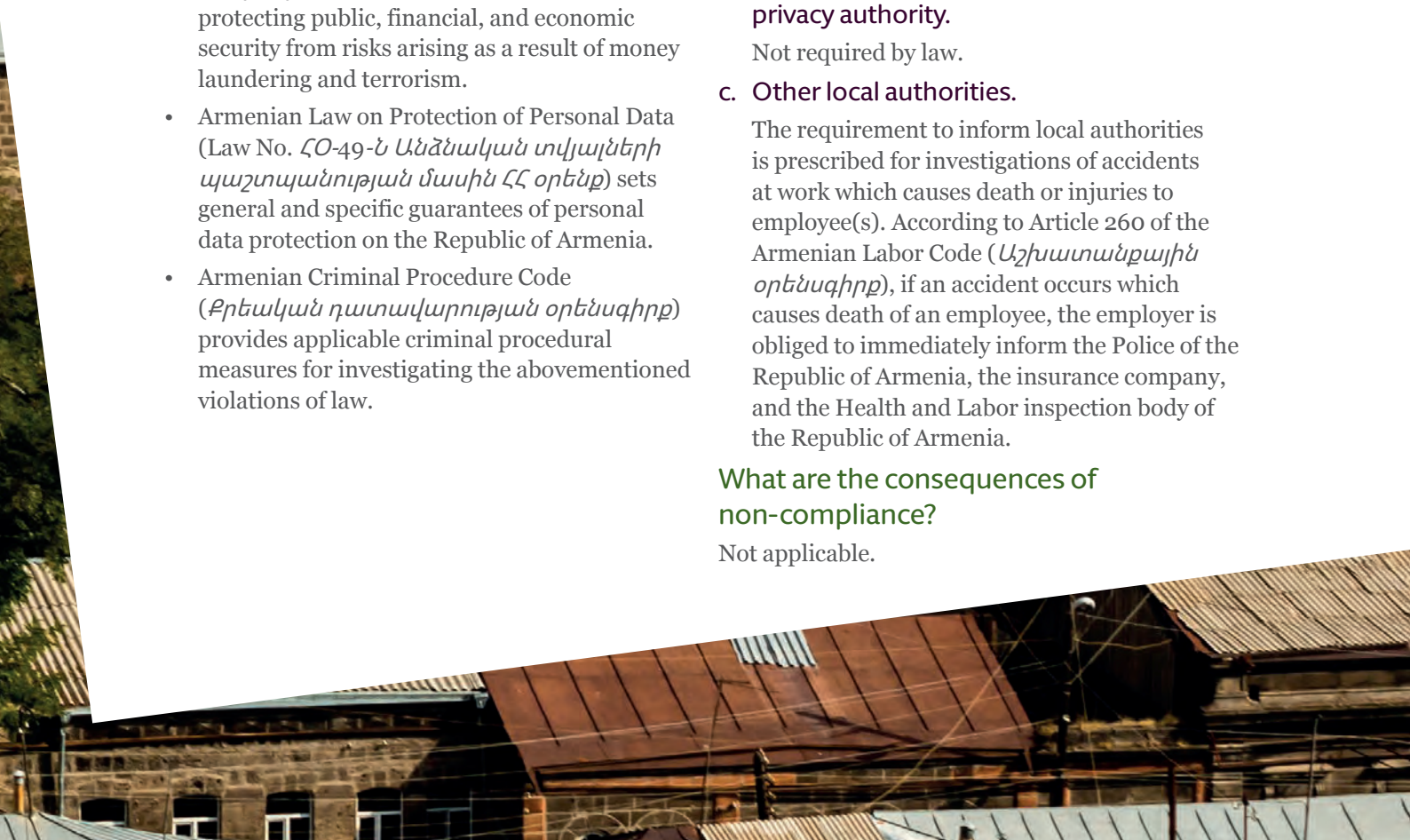
Not required by law.

c. Other local authorities.

The requirement to inform local authorities is prescribed for investigations of accidents at work which causes death or injuries to employee(s). According to Article 260 of the Armenian Labor Code (*Աշխատանքային օրենսգիրք*), if an accident occurs which causes death of an employee, the employer is obliged to immediately inform the Police of the Republic of Armenia, the insurance company, and the Health and Labor inspection body of the Republic of Armenia.

What are the consequences of non-compliance?

Not applicable.



3. Do employees have a duty to support the investigation, for instance by participating in interviews? Is there anything a company can do to require employees to support an investigation (e.g., advance consents)? Can companies impose disciplinary measures if an employee refuses to cooperate?

In the Republic of Armenia, the internal investigations are not regulated by law and by default, the employees do not have a duty to support the investigation. However, internal disciplinary regulations of a company may stipulate such obligations and consequences in case of non-cooperation. For instance, a company is free to provide disciplinary liability in case of non-cooperation.

4. Can any labor law deadlines or statute of limitations be triggered, or any rights to sanction employees be waived, by investigative actions? How can this be avoided?

According to Article 227 of Armenian Labor Code (*Աշխատանքային օրենսգիրք*), disciplinary sanctions may be imposed on an employee within a month following revelation of misconduct – the period of absence of the employee because of temporary incapacity, business trip or leave does not count. A disciplinary sanction may not be applied if six months have passed from the day when the misconduct occurred. If the misconduct is revealed during an auditing, financial-economic activity, a check (inventory) of sums or other values, the disciplinary sanction may be imposed on an employee if not more than one year has passed from the day when the misconduct occurred.

The Armenian Labor Code also stipulates that one disciplinary sanction shall be imposed for each disciplinary misconduct, i.e., multiple sanctions cannot be imposed for one misconduct. Different types of disciplinary sanctions (e.g., reprimand, severe reprimand, termination of employment contract in certain cases) are contained in the Armenian Labor Code. It is at the employer's discretion to choose the most convenient one for each case. Sanctions not envisaged by the law are prohibited.

5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:

a. Conducting interviews?

Safeguards provided under Armenian law on protection of personal data (Law No. *ՀՕ-49-Ն Անձնական տվյալների պաշտպանության մասին ՀՀ օրենք*) are applicable to any interaction with personal data. The main principles for processing personal data are the principle of lawfulness, the principle of proportionality, principle of reliability, and principle of minimum engagement of subjects. The processing of personal data can be considered lawful if the data has been processed in observance of the requirements of the law and the data subject has given his or her consent, except for cases directly provided for by the law or if the data being processed has been obtained from publicly available sources of personal data.

Personal data may be processed without the data subject's consent, where the processing of such data is directly provided for by law. The data subject's consent shall be considered to be given and the processor shall have the right to process, where personal data is contained in a document addressed to the processor and signed by the data subject. This is the position except for cases where the document, by its content is an objection against the processing of personal data, the processor has obtained data on the basis of an agreement concluded with the data subject and uses it for the purposes of operations prescribed by the agreement between parties or the data subject voluntarily, for use purposes verbally transfers information on his or her personal data to the processor.

The Guide on personal data protection in labor relations ("**Personal Data Guide**") drafted by the Agency for Protection of Personal Data of the Ministry of Justice of the Republic of Armenia ("**Agency**") provides that personal data protection is based on the principle of balance between interests of an employer and an employee. The Personal Data Guide also contains the principle of legal processing of

personal data with clarified certain aim and principle of employees being informed about the collection and process of personal data. In practice, these principles are to ensure the valid and active status of safeguards provided under Armenian law on Protection of Personal Data.

b. Reviewing emails?

Employers, based on their lawful interests, have the right to review working emails of employees. If the employee has under his/her employment contract or employers internal regulations to use his/her personal email for business purposes, such personal emails may also be reviewed if necessary. The employee should be informed before any review is carried out, although his/her consent is not necessary.

The best practice is to inform the employee in advance about the possibility of an email review. Nevertheless, no certain procedure is provided by the Personal Data Guide.

The Personal Data Guide specifically mentions that sometimes business emails are used for personal purposes. The employer should avoid reading personal emails and read business emails only. When an employee uses business email for private purposes, he/she should put those emails in a folder named "private". The issue on whether the private folder can be reviewed if the employee has reasonable doubts that not only private emails are stored there is not regulated by legislation, nor by the Personal Date Guide.

It is considered to be best practice for the employer to develop and adopt rules for email review containing specific conditions under which the employer would be authorized to review emails.

c. Collecting (electronic) documents and/or other information?

The Personal Data Guide states that the employer should collect personal data about an employee from the employee himself/herself. If the necessary data is to be obtained from a third-party source, an employer should request the employee's written consent for collecting documents and other information from the third-party source.

In order to receive written consent, the employer should inform the employee on the purposes of data collection, possible sources and means for obtaining the data, and nature of the data itself. The personal data of the employee should never be collected secretly without his/her consent.

d. Analyzing accounting and/or other mere business databases?

General and special safeguards stated above on data collection and processing are also applicable to analyzing accounting and/or other mere business databases.

6. Do any specific procedures need to be considered in case a whistle-blower report sets off an internal investigation (e.g., for whistle-blower protection)?

Armenian law provides no specific procedures or any specific protection in connection with whistle-blower reports.

7. Before conducting employee interviews in your country, must the interviewee:

a. Receive written instructions?

There is no requirement to provide written instructions.

b. Be informed that he/she must not make statements that would mean any kind of self-incrimination?

There is no such obligation. However, there is a basic constitutional safeguard prescribing that every person may refuse to provide any self-incriminating information. It is very important to give notice of this constitutional protection in advance of an interview, if an internal investigation entails criminal proceedings, as a person may challenge the admissibility of the interview as evidence where such notice was not provided.

c. Be informed that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee (so-called Upjohn warning)?

Not required by law.

d. Be informed that they have the right to have their lawyer attend?

There is no obligation to do so, but it is regarded as best practice.

e. Be informed that they have the right to have a representative from the works council (or other employee representative body) attend?

Not required by law.

f. Be informed that data may be transferred across borders (in particular to the United States of America)?

The employee should be informed about his/her private data's transfer across borders (for more detail please see paragraph h).

g. Sign a data privacy waiver?

Not required by law.

h. Be informed that the information gathered might be passed on to third parties, including local or foreign authorities?

Transferring personal data to another state includes the transfer of any report or copy of data by means of electronic or any other communication.

Personal data of an employee can be transferred to a third party only where written consent has been given by him/her. The personal data of the employee may be transferred to a third party without written consent if

i. obtaining the written consent is impossible; and

ii. such transfer is necessary to preserve the employee's health or life (e.g., the employee fainted during work and medical assistance is needed).

Regardless of the level of personal data protection in the state to which the personal data is being transferred, the transfer of personal data to other states is subject to employee's consent. While requesting for the employee's consent, the employee should be informed about the state receiving the data, nature of the data, purpose of transfer and scope of people getting the data (e.g., the data is going to be received by employees of the human resources department).

If the personal data is transferred to a state without a proper level of data protection, the employer must receive the consent of the Agency before transferring. The Agency is obliged to confirm or refuse to confirm the transfer within 30 days from the day when the Agency received the request for the data transfer.

If the state has proper level of data protection, it may be transferred without Agency's approval. The state is considered to have proper level of data protection if:

- Personal data is transferred according to the procedure stated in international treaties.
- Personal data is transferred to states included in the Agency's official list (e.g., Italy, Denmark, Argentina, Canada, Russia, the United Kingdom of Great Britain and Northern Ireland, the United States of America (to commercial organizations) etc.)

i. Be informed that written notes will be taken?

Not required by law.

8. Are document-hold notices or document-retention notices allowed in your country? Are there any specific rules that need to be followed (point in time, form, sender, addressees)?

Not required by law. Internal relations may contain hold notices for investigative processes, i.e., the employer is free to provide such notices, breaches of which may result in disciplinary sanction.

9. Can attorney-client privilege (legal advice privilege) be claimed over findings of the internal investigation? What steps may be taken to ensure privilege is maintained?

According to the Armenian law on Advocacy (Law No. *ՀՕ-29-Ն Փաստաբանության մասին օրենք*) attorney-client privilege applies to the information and evidence that a person seeking legal assistance has transferred to an "advocate" (i.e., to a lawyer admitted to the Armenian Bar and who has a status of an "advocate"), the content and nature of the advocate's advice, and the information and evidence obtained by the advocate on his/her own behalf. If an internal investigation is conducted by a duly retained advocate, it is likely that the information regarding the investigation and obtained in the course of the investigation will be protected by attorney-client privilege.

10. Can attorney-client privilege also apply to in-house counsel in your country?

If an attorney provides legal aid to a client based on a labor contract between them, the information gained by the attorney is not protected by attorney-client privilege as the legal regime of employer-employee applies. However, if an attorney provides legal aid based on a contract of service or retainer, attorney-client privilege applies.

11. Are any early notifications required when starting an investigation?

There is no legal obligation to send any notifications when starting an investigation.

a. To insurance companies (D&O insurance, etc.) to avoid losing insurance coverage.

   It is not required by law but such a requirement can be included in the insurance contract between parties.

b. To business partners (e.g., banks and creditors).

   It is not required by law, but requirements for early notifications may be included in contracts between business partners.

c. To shareholders.

   Not required by law.

d. To authorities.

   Not required by law. In case of accidents, however, the employer is obliged to provide the information to relevant state authority as described in the response to question 2 above.

12. Are there any other immediate measures that have to be taken in your country, or would be expected by the authorities once an investigation starts, e.g., any particular immediate reaction to the alleged conduct?

There are no clear immediate measures prescribed by Armenian law.

Nevertheless, when a case of internal investigation is being revealed to or by a representative of a public authority, pre-investigation and investigation bodies may intervene in accordance with the procedure provided by the Armenian Criminal Procedure Code and require immediate measures to be taken. If the reasons of internal investigation *prima facie* contain elements of crime, state authorities will initiate criminal proceeding and carry it out themselves.

13. Is there a duty to self-report the discovered misconduct to prosecuting authorities?

There is no duty to self-report the discovered misconduct to prosecuting authorities. Therefore, no liability may follow failure to self-report.

However, Armenian law provides for liability for concealment of a grave or particularly grave crime, as well as tools and means of the crime, crime traces, or criminally acquired items.

14. If local prosecuting authorities become aware of an internal investigation, would they interfere in it or ask for specific steps to be followed?

If local prosecuting authorities become aware of an internal investigation, there are several scenarios which can take place.

- If the matter under internal investigation has criminal characteristics, pre-investigation authorities are likely to immediately take steps to initiate a criminal case, e.g., they may start taking explanations from certain individuals.
- State authorities may request the data which was already collected by the employer within the internal investigation and the employer is obliged to provide such data, or they may start gathering evidence by themselves from the very beginning, i.e., without usage of the information received within the internal investigation.
- Investigative bodies have to perform all the actions by themselves, i.e., they cannot instruct the employer to interview certain individuals or take any other steps.
- If there are no obvious elements of a crime, investigative authorities can take no steps to interfere in an internal investigation.

15. Please describe the legal prerequisites for search warrants or dawn raids on companies in your country. If the prerequisites are not fulfilled, can the evidence gathered still be used against the company?

The investigator may conduct a search if he/she has grounds to suspect that there are instruments of crime, files and assets acquired in a criminal way, and/or other items or documents, which can be significant for the case in any premises/place or in possession of a person in order to find and obtain mentioned items. Searches at companies' offices are conducted on the basis of the investigator's order, while searches at private premises can be conducted only upon a court's prior approval. If the search is conducted in a personal cabinet of an employee, a court order is also needed as the legal regime for such searches is equalized to the regime for searches in apartments.

If the search was conducted with grave procedural violations, evidence gathered within it is deemed to be inadmissible.

When entering an office for a search, the investigator must firstly show the court order permitting the search to the person whose premises will be searched. After, the investigator offers to give an object or a person which/who is being searched. If the person refuses to voluntarily pass the objects to the investigator, the search begins. As a general rule, a search is conducted in the presence of the person whose premises is being searched. However, there is no legislative requirement for his/her presence, therefore the search can be legally conducted in the absence of such person. Showing the court order to the person whose premises is being searched is also not a legislative requirement either, consequently a search may take place without this procedure.

General rules of criminal procedure in the Republic of Armenia prescribe that investigative actions (including a search) should be conducted during daytime. But in exceptional cases (e.g., if the delay in conducting the search would make it purposeless), a search may be conducted at night.

Dawn raids are not provided by the legislation, but in practice, if necessary, dawn raids may be conducted.

16. Would voluntary self-disclosure or cooperation with state authorities help avoid or mitigate liability? What are the requirements to obtain the cooperation credit?

Armenian law does not provide for cooperation with investigation, i.e., there are no legal safeguards that cooperation may help avoid or mitigate liability. However, the common practice is that cooperation leads to mitigation of liability.

Under Armenian criminal law, an individual is released from criminal liability for bribery if:

- The bribe was given as a result of extortion by a government official.
- A person who gave a bribe self-reported on the bribe and assisted in uncovering the crime. This is provided that such self-report was made before the law enforcement authority learns about the crime independently and not more than during three days after committing the crime.

The draft amendments to the Armenian Criminal Procedure Code, which are currently being discussed, contain regulations for cooperating procedures. The options of cooperation are not clarified by the draft amendments to the Armenian Criminal Procedure Code.

17. Are deals, non-prosecution agreements, or deferred prosecution agreements available and common for corporations in your jurisdiction?

Not applicable. Corporations or any other types of legal entities are not subject to criminal investigation in the Republic of Armenia.

18. What types of penalties (e.g., fines, imprisonment, disgorgement, or debarment) could companies, directors, officers, or employees face for misconduct of (other) individuals of the company?

Under Armenian criminal law, penalties include fines, prohibition to hold certain positions or practice certain professions, arrest and imprisonment for a certain term.

Only individuals may be criminally liable; there is no criminal liability for legal entities. Furthermore, one can be held criminally liable in the Republic of Armenia only for actions or inactions committed by himself/herself individually.

19. Can penalties for companies, their directors, officers, or employees be reduced or suspended if the company can demonstrate an efficient compliance system? Does this only apply in cases where efficient compliance systems have been implemented prior to the alleged misconduct?

Not regulated by law.

20. Please briefly describe any investigation trends in your country (e.g., recent case law, upcoming legislative changes, or special public attention on certain topics).

The Republic of Armenia has prioritized the sphere of investigating corruption, bribery, and money laundering cases since its independence. Over the years, there has been a broad scope of regulations intended to minimize the possibility of any kind of violations in these spheres.

Recently, draft versions of the Armenian Criminal Code and the Armenian Criminal Procedure Code were presented and are being discussed by the appropriate authorities. Both legal acts provide specific proceedings for thorough investigation of crimes occurring in spheres discussed.

Particularly, the draft version to the Armenian Criminal Code contains a revolutionary provision which makes legal entities subject to criminal liability (e.g., illegal entrepreneurship, illegal actions during bankruptcy or insolvency proceedings, and deliberate bankruptcy).

The draft version of Armenian Criminal Procedure Code contains regulations allowing possible options of cooperation between state authorities and suspects. During the discussion of the draft amendments to the Codes, the idea of establishing a special court for examination of corruption cases only was also discussed.

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Azerbaijan

Contributed by MGB Law Offices

	Corporate liability	Public bribery	Commercial bribery	Extraterritorial applicability of criminal laws	Adequate procedures defense
Yes	✓	✓	✓	✓	✓
No					

1. What are the laws relating to anti-corruption, bribery, and money laundering in your country?

The following national laws apply to anti-corruption, bribery, and money laundering:

1. Law on Combating Corruption (Law No. 580-IIQ *Korrupsiyaya qarşı mübarizə haqqında Qanun*).
2. Azerbaijani Criminal Code (*Cinayət Məcəlləsi*).
3. Law on Prevention of legalization of criminally obtained funds or other property and financing of terrorism (Law No. 767-IIIQ *Cinayət yolu ilə əldə edilmiş pul vəsaitlərinin və ya digər əmlakın leqallaşdırılmasına və terrorçuluğun maliyyələşdirilməsinə qarşı mübarizə haqqında Qanun*).
4. Law on State Service (Law No. 926-IQ *Dövlət qulluğu haqqında Qanun*).
5. Law on Rules of Ethical Conduct of Civil Servants (Law No. 352-IIIQ *Dövlət qulluqçularının etik davranış qaydaları haqqında Qanun*).

2. Do the following persons or bodies have the right to be informed, or is the company obliged to inform the following persons/bodies, about an internal investigation before it is commenced? Do they have the right to participate in the investigation (e.g., in interviews)?

a. Employee representative bodies, such as a works council or union.

There is no specific requirement to inform trade unions or other unions of employees about internal investigations.

b. Data protection officer or data privacy authority.

There is no specific requirement to inform data protection officers or data privacy authorities about internal investigations.

c. Other local authorities.

There is no specific requirement to inform other local authorities about internal investigations. Such a requirement is set however for investigations of accidents at work or for occupational diseases of employees.

What are the consequences of non-compliance?

Not applicable.

3. Do employees have a duty to support the investigation, for instance by participating in interviews? Is there anything a company can do to require employees to support an investigation (e.g., advance consents)? Can companies impose disciplinary measures if an employee refuses to cooperate?

There is no statutory duty for employees to support an investigation, e.g., by participating in interviews. However, if an employee's employment contract contains the general obligations for him/her to follow instructions of an employer, upon the employer's instructions, the employee should follow such obligations and attend the investigations. Alternatively, such an obligation for employees can be created in the internal disciplinary rules of a company. However, as Azerbaijani law does not provide that the employee can be compelled to participate in interviews, in practice, it is recommended to obtain the prior written consent of the employee as to his/her collaboration with the employer's internal investigation.

Disciplinary measures can be applied in case of, inter alia, violation of the employee's duties stipulated by the employment contract or the internal disciplinary rules of the company. If therefore the employee refuses to follow the instructions of the employer (e.g., as to cooperation with the investigation) violating his/her obligations set out by the employment contract or the internal disciplinary rules of the company, the employer may apply disciplinary actions in the manner determined by the relevant labor law.

4. Can any labor law deadlines or statute of limitations be triggered, or any rights to sanction employees be waived, by investigative actions? How can this be avoided?

Under the Labor Code (*Əmək Məcəlləsi*), disciplinary actions can be applied within a month after the misconduct by the employee has been revealed by an authorized representative of the employer who is responsible for supervising the labor activity of the employee. This limitation period does not include the period when the employee is sick, on vacation or a business trip.

The Labor Code further stipulates that disciplinary actions must be applied within six months of the misconduct occurring. If however, the misconduct concerned a breach of professional duties and has been revealed as a result of state or internal audit (examination, inspection) of the financial activity of the company, disciplinary action may be applied within two years of the misconduct occurring. This term does not include the time of a criminal investigation (if any).

5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:

a. Conducting interviews?

Data privacy or commercial secrecy laws do not provide for specific terms applicable to conducting interviews in internal investigations, but the general rules described in response to question (c) will apply to the collection of personal data.

b. Reviewing emails?

The laws do not specifically regulate the issues relating to corporate email communications, but it is recommended to adopt an internal policy that prohibits the use of corporate devices for private purposes and allows the employer to monitor emails and other correspondence of employees sent through, or stored on, company-issued devices. Employees should be familiarized with such a policy.

c. Collecting (electronic) documents and/or other information?

Under the Law on Personal Data No. 998-IIIQ (Fərdi məlumatlar haqqında Qanun), collection or cross-border transfer of personal data requires a data subject's written consent. The consent shall be in written or electronic form and contain the information required by the Law on Personal Information.

The written consent of the data subject for collection or cross-border transfer of the personal data must include the following:

a. Identification details of the data subject.
b. Identification details of the owner or operator of a database.
c. The purpose of collection/processing of the personal data.
d. A list of the personal data consented for processing, as well as the list of processing operations.
e. The term during which the consent remains valid and terms of revocation of the consent.
f. Terms for disposal or archiving of the personal data in the event of the data subject's death or expiration of personal data storage term.

d. Analyzing accounting and/or other mere business databases?

There are no specific restrictions in respect of analyzing accounting or other business databases. If business databases contain personal data, the requirements indicated in preceding paragraph (c) should be taken into account.

6. Do any specific procedures need to be considered in case a whistle-blower report sets off an internal investigation (e.g., for whistle-blower protection)?

The Law on Combating Corruption establishes the obligation to protect the confidentiality of the person who provides information on corruption-related offenses. If the whistle-blower does not want to disclose information about himself/herself, his/her identity shall be kept secret, but this duty applies only to state authorities and state enterprises/organizations. Unauthorized disclosure of a whistle-blower's identity or threatening, or causing, harm to the whistle-blower or their relatives is subject to administrative and criminal liability.

If there are real threats to the life, health, or property of a whistle-blower, or his/her relatives, he/she may apply to a prosecutor for security measures provided by the Law "On State Protection of Persons Participating in Criminal Procedures" No. 585-IQ (*Cinayət prosesində iştirak edən şəxslərin dövlət müdafiəsi haqqında Qanun*).

7. Before conducting employee interviews in your country, must the interviewee:

a. Receive written instructions?

It is not mandatory for the interviewee to receive written instructions prior to participating in an employee interview.

b. Be informed that he/she must not make statements that would mean any kind of self-incrimination?

Although it is not mandatory, it would be advisable to inform the interviewed employee that he/she may refuse to make statements that would lead to any kind of self-incrimination.

c. Be informed that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee (so-called Upjohn warning)?

Although it is not mandatory, it is advisable to inform the employee that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee.

d. Be informed that they have the right to have their lawyer attend?

Although it is not mandatory, it could be advisable under specific circumstances, e.g., when the employer's lawyer is under the impression that the interviewee does not properly understand his or her legal rights, in order to avoid a potential argument that the interviewee's right to be "legally protected" was infringed.

e. Be informed that they have the right to have a representative from the works council (or other employee representative body) attend?

Although it is not mandatory, it could be advisable under specific circumstances. For example, if an interviewed employee is a member of the trade union or other representative body or if there is a collective agreement signed between the trade union and employer stipulating such requirement, it may be necessary to inform the employee that he/she may have a representative from such body/union.

f. Be informed that data may be transferred across borders (in particular to the United States of America)?

Under the Law on Personal Data, any collection and processing of personal data of any individual ("data subject") is permitted only upon obtaining written consent from the data subject or on the basis of information submitted by said data subject. Based on the same Law, cross-border transmission of personal data can be implemented if the personal data subject gives his/her consent to such transmission, or the transfer of personal data is necessary to protect the life and health of said subject.

g. Sign a data privacy waiver?

As noted above with regards to personal data, the employer will be required to obtain written consent of the data subject to process his/her personal data. If the employer envisages receiving other private information about the employee, it could be advisable to obtain the employee's written consent to further operations with this information.

h. Be informed that the information gathered might be passed on to third parties, including local or foreign authorities?

Under the Labor Code, information about labor activity of an employee can be passed on to third parties, including the governmental authorities, upon receipt of their written query and subject to consent of the relevant employee. Also the Law on Personal Data envisages that subject to certain exceptions, any transmission of personal data of a data subject to any third parties shall be permitted only upon obtaining written consent from the data subject.

Written consent is not required in the following cases:

- When transferring personal data of an open category (i.e., information about the subject, anonymized in the prescribed manner, disclosed by the data subject or entered with their consent into information systems created for public use. Examples: surname, name and patronymic.).
- When transferring confidential personal data in connection with the fulfilment by the state or local government of the tasks assigned to them, provided that the requirements for personal data information systems established by law are observed.

i. Be informed that written notes will be taken?

It is not mandatory, but it is advisable to inform the interviewee that written notes of the interview will be taken.

8. Are document-hold notices or document-retention notices allowed in your country? Are there any specific rules that need to be followed (point in time, form, sender, addressees)?

Yes, document-hold notices and document-retention notices are allowed in Azerbaijan. However, there are no statutory rules about the content of such notices or a procedure for sending them by the in-house counsel. As a rule, it depends on a particular corporate policy of the company and nature of proceedings against it. In general practice, retention notices detail the type of evidence that must be preserved for the purposes of an investigation, including electronic information.

9. Can attorney-client privilege (legal advice privilege) be claimed over findings of the internal investigation? What steps may be taken to ensure privilege is maintained?

The concept of attorney-client privilege is not developed in Azerbaijan, but the local legislation recognizes a similar concept of advocates' secret. It will apply to a particular case if the following elements are met:

1. Information was received by a qualified advocate in Azerbaijan.
2. Information was received as part of provision of legal assistance to an individual or a legal entity.

The Law on Advocates and Advocacy No. 783-IQ (*Vəkillər və vəkillik fəaliyyəti haqqında Qanun*) includes provisions that protect professional secrets of advocates. Under the Law, an advocate is a member of the Bar Association of Azerbaijan conducting advocacy activities. Therefore, the concept of advocates' secrets extends only to advocates conducting advocacy activities and does not apply to the activities of lawyers who are not advocates.

Advocates' secrets include receipt of information and provision of advice in connection with exercising advocates' professional duties. Information obtained by an advocate during the provision of legal support as part of an internal investigation would be protected by advocates' secrets.

10. Can attorney-client privilege also apply to in-house counsel in your country?

The Law on Advocates and Advocacy stipulates that an advocate can work on an individual basis or as a member of an advocacy association. Acting on "individual basis" means acting on the basis of a service agreement on the provision of advocacy services between the advocate and the client. In the absence of such an agreement, the advocates' secrets would not apply to in-house counsel.

11. Are any early notifications required when starting an investigation?

a. To insurance companies (D&O insurance, etc.) to avoid losing insurance coverage.

   In general, in the absence of a particular contractual provision, there is no legal requirement to provide prior notice of an investigation to insurance companies.

b. To business partners (e.g., banks and creditors).

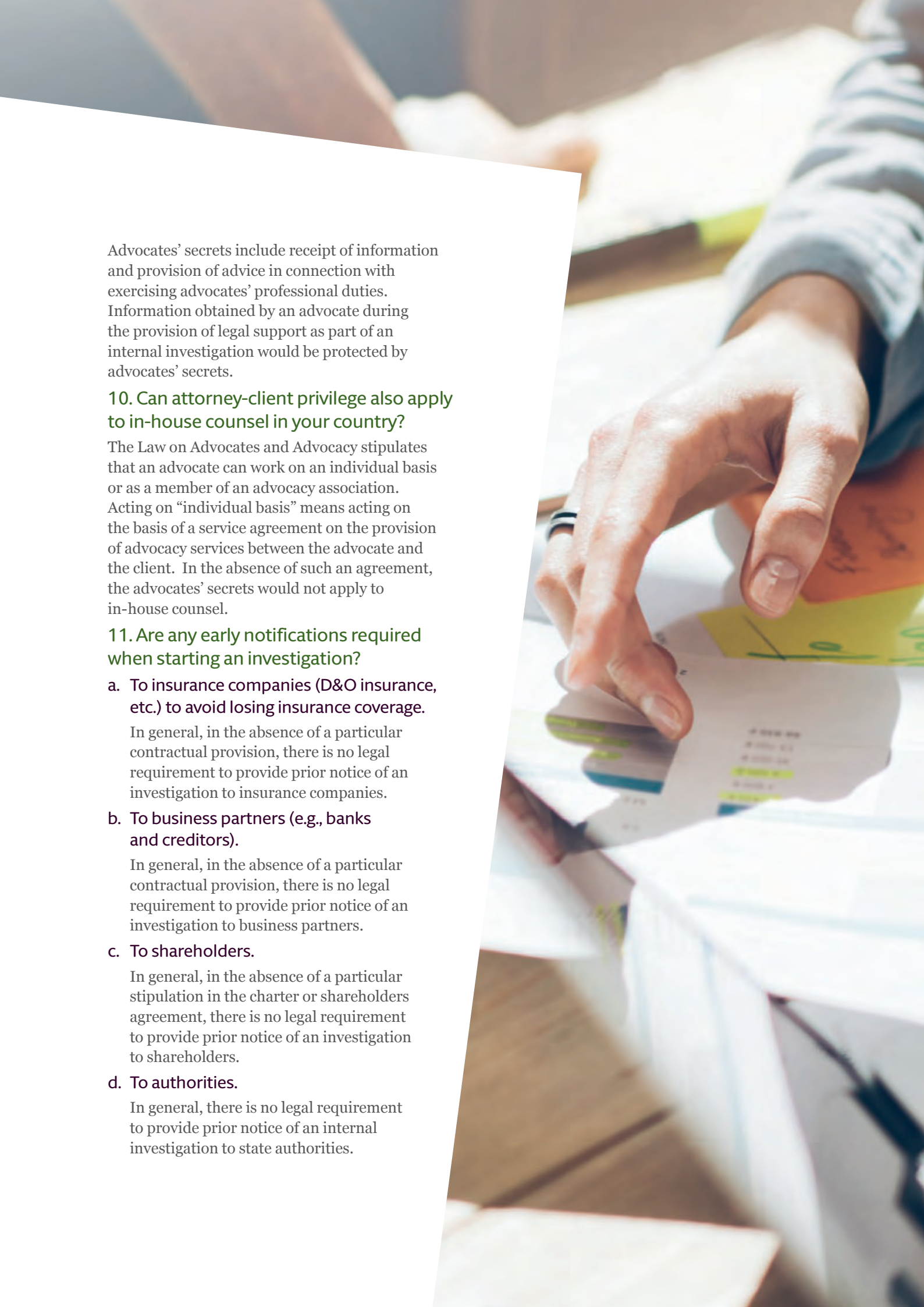
   In general, in the absence of a particular contractual provision, there is no legal requirement to provide prior notice of an investigation to business partners.

c. To shareholders.

   In general, in the absence of a particular stipulation in the charter or shareholders agreement, there is no legal requirement to provide prior notice of an investigation to shareholders.

d. To authorities.

   In general, there is no legal requirement to provide prior notice of an internal investigation to state authorities.



12. Are there any other immediate measures that have to be taken in your country, or would be expected by the authorities once an investigation starts, e.g., any particular immediate reaction to the alleged conduct?

Depending on the nature of investigation and the subject matter of the case being investigated, it might be necessary to stop or prevent the irregular action and avoid the destruction of potentially relevant documents.

13. Is there a duty to self-report the discovered misconduct to prosecuting authorities?

The duty to self-report is set only for state officials.

Companies and individuals are not required to self-report, but if they do so voluntarily, they can be released from criminal liability for bribery.

In addition to the above, under the Law on Prevention of legalization of criminally obtained funds or other property and financing of terrorism, certain entities (such as credit organizations, insurers, legal entities providing leasing services, etc.) must inform the financial regulatory authority in case, among others, there are any suspicions about the beneficial owner of particular financial transactions.

14. If local prosecuting authorities become aware of an internal investigation, would they interfere in it or ask for specific steps to be followed?

In general, there is no legal requirement for the local prosecuting authorities to interfere in internal investigations if they become aware of it. However, under the Criminal Procedure Code (*Cinayət Prosessual Məcəlləsi*), a prosecutor has a general obligation to consider received applications and other materials on impending or committed crimes; to initiate a criminal case if there are sufficient reasons and grounds; and, using the powers of an investigator in the case, to conduct a preliminary investigation into a given case. In particular, based on the same Code, a prosecutor, having received a message about acts reflecting signs of an impending or committed crime, or having directly discovered a criminal incident, must, in the statutorily prescribed manner, take measures to preserve and seize traces of the crime, as well as to immediately conduct an inquiry or investigation within their powers.

15. Please describe the legal prerequisites for search warrants or dawn raids on companies in your country. If the prerequisites are not fulfilled, can the evidence gathered still be used against the company?

No definition of, or special procedures in respect of, dawn raids are prescribed in the legislation. Based on recent practice, in view of the COVID-19 outbreak in the country, raids have been conducted in respect of public catering objects for the purposes of assessing observance of sanitary and hygienic rules. In this respect, the Food Safety Agency issued internal orders about conducting raids and monitoring measures at particular food and catering objects, and no advance notices were provided during the course of such raids.

The issues of search warrants are mainly governed by the Criminal Procedure Code. According to this Code, an investigator may conduct a search if there are sufficient grounds proving that items or documents important for investigation are kept in residential buildings, offices, production buildings, or other premises. As a rule, a search is conducted based on a court decision. In certain exceptional urgent cases a search may be started without obtaining a court decision. An advocate of a suspected person can attend the search. Representatives of the company must also attend the search.

An investigator may enter the residential or other buildings based on the search decision. Prior to commencement of a search an investigator should familiarize a searched person about such decision. A video shooting of the search is mandatory unless two witnesses attend the search.

16. Would voluntary self-disclosure or cooperation with state authorities help avoid or mitigate liability? What are the requirements to obtain the cooperation credit?

As noted earlier, according to the Criminal Code, if a bribe-giver voluntarily reports to the relevant state authority about the bribe given, such a bribe-giver can be released from criminal liability.

Pursuant to the Criminal Code, cooperation with state authorities can help to avoid or mitigate liability. Criminal liability can be avoided if the person who committed the crime does not pose a great public danger and has actively cooperated in solving the crime. This exception will not however apply to corruption-related offenses.

In addition, the court may consider mitigating circumstances in sentencing decisions which may potentially result in a more lenient punishment with respect to individuals. One such circumstance includes voluntary appearance and admission of fault by a person, actively cooperating in solving the crime, exposing its participants, and searching for, and finding, property obtained as a result of a crime. In the presence of all such circumstances, and in the absence of aggravating circumstances, the term or amount of punishment may not exceed three-quarters of the most severe limit on the type of punishment provided for in the Criminal Code.

Furthermore, if a person that was complicit in a crime actively cooperates in its solving, the court may impose a punishment that is below the lower limit set in the Criminal Code; impose a milder type of punishment than is set in the Criminal Code; or not apply the additional type of punishment established as mandatory.

When deciding on the limit on the punishment with respect to legal persons, the court may also take into account the legal person's cooperation in solving the crime, exposing its participants, and searching for, and finding, property obtained as a result of a crime.

No special requirements for obtaining "cooperation credit" are established.

17. Are deals, non-prosecution agreements, or deferred prosecution agreements available and common for corporations in your jurisdiction?

Azerbaijani legislation does not expressly recognize non-prosecution agreements, or deferred prosecution agreements. There are certain cases, however, when a person who has committed certain crimes (e.g., tax evasion) can be released from criminal liability if they fully compensate for the damage caused as a result of his/her crime and pay additional due payments.

18. What types of penalties (e.g., fines, imprisonment, disgorgement, or debarment) could companies, directors, officers, or employees face for misconduct of (other) individuals of the company?

<table>
<tr><th>Liability</th><th>Act by</th><th>Imposed on</th><th>Measures</th></tr>
<tr><td>Criminal</td><td rowspan="2">1. An official authorized to represent the company.
2. An official authorized to make decisions on behalf of the company.
3. An official authorized to control the activities of the company.
4. An employee of a legal entity as a result of failure to exercise control on the part of officials (1)-(3).</td><td rowspan="2">Company</td><td>1. Fine
2. Special confiscation
3. Deprivation of the right to engage in certain activities
4. Liquidation of a legal entity</td></tr>
<tr><td>Administrative</td><td>1. Warning
2. Fine
3. Confiscation of an object that was an instrument of administrative wrongdoing or the direct object of an administrative offense</td></tr>
<tr><td>Criminal</td><td colspan="2" rowspan="2">Director/officer/employee him/herself</td><td>In addition to those measures specified in (1) to (3) above, measures could include restriction of freedom, community service, correctional services, etc.</td></tr>
<tr><td>Administrative</td><td>In addition to those measures specified in (1) to (3) above, measures could include restrictions on a special right granted to an individual, administrative expulsion and administrative arrest.</td></tr>
</table>

19. Can penalties for companies, their directors, officers, or employees be reduced or suspended if the company can demonstrate an efficient compliance system? Does this only apply in cases where efficient compliance systems have been implemented prior to the alleged misconduct?

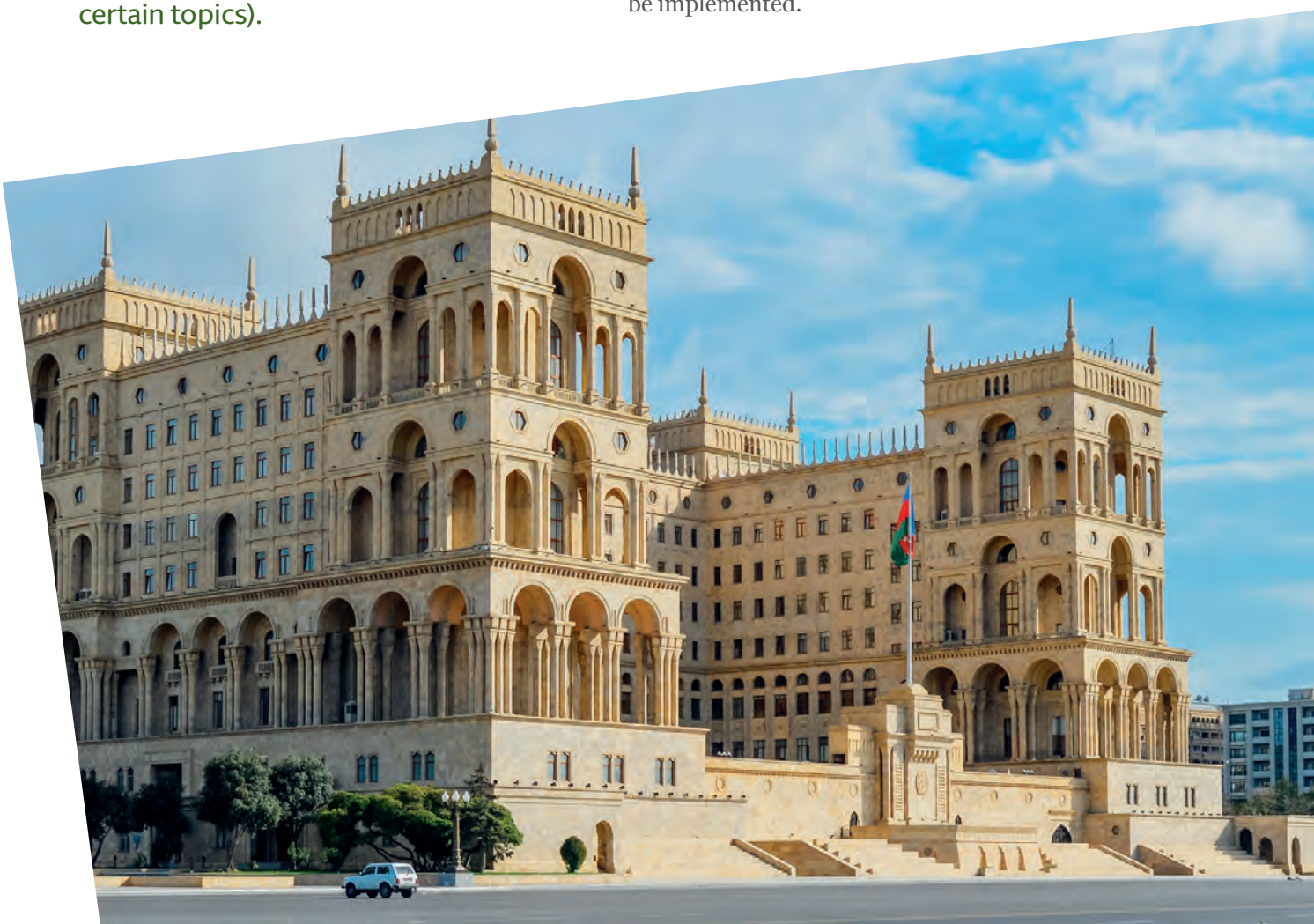
Implementation of an efficient compliance system may be helpful and mitigate the risk of imposition of penalties on companies, in applying the reduced amount of penalties to companies, their directors, officers or employees.

This only applies in case the efficient compliance system had already been implemented prior to the alleged misconduct.

20. Please briefly describe any investigation trends in your country (e.g., recent case law, upcoming legislative changes, or special public attention on certain topics).

On 27 February 2020, the President of Azerbaijan signed the Order on National Action Plan on Promotion of Open Government. The National Action Plan comprises a set of measures to be implemented by the relevant state entities during 2020-2022. The measures are broken down into nine categories, including measures aimed at prevention of corruption and strengthening transparency in the activities of government agencies, ensuring financial transparency, and combating legalization of criminally obtained money or other property and the financing of terrorism, etc.

Upcoming legislative changes to the Law on Prevention of legalization of criminally obtained funds or other property and financing of terrorism are expected. In particular, the Council of Europe has recently held discussions with the Azerbaijani Financial Monitoring Service and produced a draft legal opinion containing an analysis of the new draft Law. However, it is not precisely clear when the upcoming legislative changes will be implemented.



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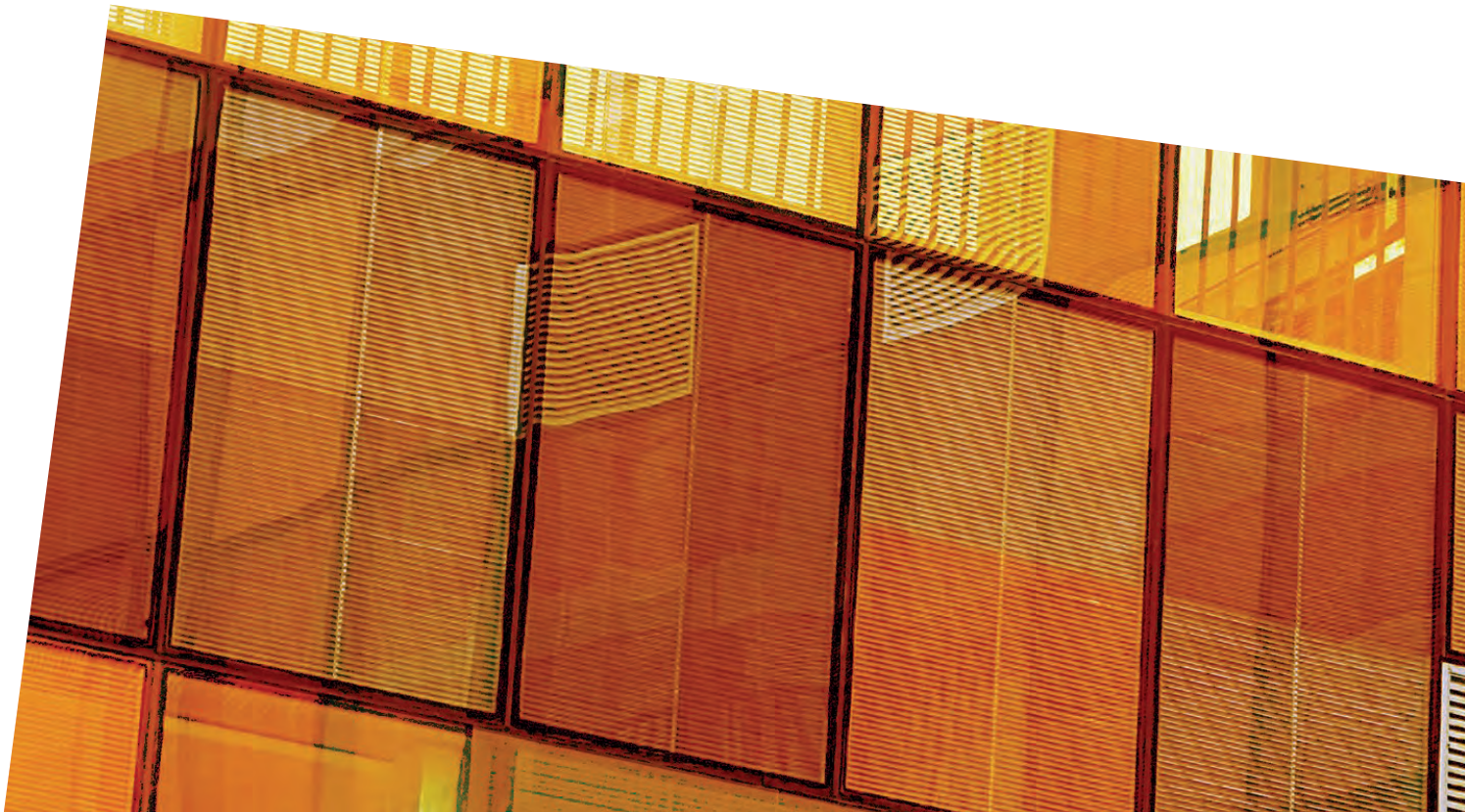
Lala Hasanova specialized in Azerbaijani commercial and company law matters. She regularly advises foreign companies on different aspects of Azerbaijani legislation, including production sharing and host government agreements. Her experience also covers advising various clients on employment, customs, tax, environmental, data protection, licensing, sports, competition, and anti-monopoly related issues.



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Kamal has experience in advising on corporate, finance, banking, employment, data protection, and tax-related statutory requirements and compliance issues. He is also experienced in drafting, and review of, various contracts, and representing clients in courts.

For the period from 2012 to 2014 he worked for the Central Bank of the Republic of Azerbaijan and is knowledgeable on the regulatory requirements of the Central Bank regarding the operation and licensing of local banks and other financial institutions as well as currency regulation in Azerbaijan. He is a specialist in reviewing and drafting various types of contracts (e.g., loan contracts, mortgage contracts, and other financing documents).

He is a member (advocate) of the Bar Association of the Republic of Azerbaijan.

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Prior to joining MGB Law Offices in 2019, Ali worked as a Tax & Law Consultant at EY. His experience covers a wide range of tax and legal matters, including: advising on tax and legal implications of various commercial transactions and deal-structuring models, drafting and reviewing loan, sale-purchase, and other business agreements, general corporate housekeeping services (e.g., preparation of constituent corporate documents and state registration of companies), etc.

Belarus

Contributed by Sorainen

	Corporate liability	Public bribery	Commercial bribery	Extraterritorial applicability of criminal laws	Adequate procedures defense
Yes		✓	✓	✓	
No	✗ No, companies cannot be held criminally liable, but can be subject to administrative liability				✗

1. What are the laws relating to anti-corruption, bribery, and money laundering in your country?

The applicable national laws are as follows:

- **Presidential Edict** on Improvement of Control (Supervision) Activity in the Republic of Belarus (Edict No. 510 *Указ о совершенствовании контрольной (надзорной) деятельности*).
- Belarusian Criminal Code (*Уголовный кодекс Республики Беларусь*).
- Belarusian Code of Criminal Procedure (*Уголовно-процессуальный кодекс Республики Беларусь*).
- Belarusian Code on Administrative Offenses (*Кодекс Республики Беларусь об административных правонарушениях*).
- Law on Combating Corruption (*Law No. 305-З Закон о борьбе с коррупцией*).
- Law on Public Service (*Law No. 204-З Закон о государственной службе*).
- Law on Measures to Prevent Legalization of Proceeds of Crime and Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction (Law No. 165-З *Закон о мерах по предотвращению легализации доходов, полученных преступным путем, финансирования террористической деятельности и финансирования распространения оружия массового поражения*).

2. Do the following persons or bodies have the right to be informed, or is the company obliged to inform the following persons/bodies, about an internal investigation before it is commenced? Do they have the right to participate in the investigation (e.g., in interviews)?

a. Employee representative bodies, such as a works council or union.

Set requirements to inform and engage the employee representative bodies about internal investigations are in place in relation to cases of employees' accidents at work causing death, injuries, or occupational disease, provided that such employee representative bodies were formed in the company.

In case of investigations with a different subject matter, the company is not obliged to inform the employees' representative bodies about the investigation or engage them to participate in such investigation (unless otherwise is provided by a collective agreement adopted in the company).

b. Data protection officer or data privacy authority.

There is no such requirement. Belarus has not yet adopted a separate law on personal data protection and there is currently no state authority supervising data privacy issues or a requirement to appoint a data protection officer.

c. Other local authorities.

Requirements to inform local authorities about internal investigation are set out in relation to the cases of investigating accidents at work. The company shall immediately notify the below authorities about group accidents at work, or lethal accidents:

- The respective local department of the Investigation Committee at the place where the accident occurred.
- The respective local structural unit of the Department of State Labor Inspection.
- Higher-ranking organizations (if any) and the local executive authority of the jurisdiction in which the company is located.
- Territorial supervising authority, if the accident occurred at the facility supervised by such authority.

The authorities listed above (except for the Investigation Committee) participate in respective investigations.

In other cases there are no requirements to inform local authorities about starting the internal investigations.

What are the consequences of non-compliance?

Failure to notify or untimely notifications about accidents at work or occupational disease in cases stipulated by law, as well as about the violation of the established procedure for the investigation of such accidents, may lead to administrative liability in the form of a fine for the company's director in the amount of up to 50 basic units (around US$550).

3. Do employees have a duty to support the investigation, for instance by participating in interviews? Is there anything a company can do to require employees to support an investigation (e.g., advance consents)? Can companies impose disciplinary measures if an employee refuses to cooperate?

Generally, employees do not have a duty to support the **investigation conducted by the employer**. However, in order for the company to ensure employees' cooperation, it is important to include in the relevant binding employment agreements (e.g., labor contract, internal labor regulations) provisions regarding the obligation of cooperation during the company's investigations and specify the actions that ought to be performed on the part of the employee (e.g., to provide oral and written explanations, and to provide the documents related to the issues under investigation).

In case of **external investigations**, during which the controlling (supervisory) authorities check the compliance of the activities carried out by the investigated companies, the employees are obliged to cooperate with the controlling (supervisory) authorities, in particular, by providing oral and written explanations in relation to the company's activities, granting access to the requested documents, etc. Failure to cooperate with the controlling (supervisory) authorities may lead to administrative liability in the form of a fine in the amount of up to 50 basic units (around US$550).

In case of an **administrative or criminal investigation**, a witness and a victim may carry administrative or criminal liability respectively as a result of the refusal to testify.

On the other hand, every person has a constitutional right to refuse giving testimony incriminating himself or herself, his or her family members as well as close relatives. In this instance, the relevant person may not be held liable for refusing to provide testimony of a self-incriminatory nature.

4. Can any labor law deadlines or statute of limitations be triggered, or any rights to sanction employees be waived, by investigative actions? How can this be avoided?

Yes, Belarusian law establishes the following deadlines for the imposition of disciplinary sanctions upon the employees:

- Not later than **one month** from the day in which the disciplinary offense is identified by the person to whom the employee is directly subordinate to. The one-month period does not take into account any time over which the employee is (a) sick or caring for a sick family member, which is confirmed by a sick list or by a certificate of temporary incapacity to work; (b) on vacation; or (c) on military or special training. The subordination of employee is established by labor contracts and/or respective internal documents (staff list, job instructions, etc.). Please note that according to the local court practice, the moment of discovery of offense is the moment when any of the supervisors of the employee have learned about the offense (ie, it may be any supervisor, including the CEO, not necessarily a direct supervisor).
- Not later than **six months** from the day in which the disciplinary offense is committed; and not later than **two years** from the day when the disciplinary offense was committed, if violation is found as a result of inspection performed by the competent controlling (supervisory) authority. These terms exclude the time of criminal proceedings. If the violation was considered by law enforcement authorities as a ground for opening a criminal case but the authorities ultimately decided not to bring criminal charges, disciplinary sanctions may be imposed not later than **one month** from the date of refusal to initiate, or decision to terminate, a criminal case.

Prior to the imposition of disciplinary sanction, the employer must request a written explanation from the employee. There is no specified period of time for the provision of written explanation from the employee.

Failure of the employer to comply with the obligation to demand a written explanation from the employee and to receive such explanation may not count as a ground for nullifying disciplinary sanctions, if the violation of the labor discipline is confirmed by evidence presented to the court by the employer.

Please note that the period of internal investigation, including the part of receiving employees' explanations, is not excluded from the relevant time period necessary to impose disciplinary penalties. The reason for the above is as follows: once the employer learns about disciplinary breaches (or alleged breach) from certain source, the employer performs internal investigation in order to verify all the relevant facts and, particularly in the case of 'alleged breach', to confirm whether further supporting evidence can be found. Therefore, the investigation needs to be performed within the abovementioned one-month period. Failure to do so may lead to a risk of missing the deadline.

The order (instruction, decision, resolution, minutes) on disciplinary sanction with explanation of its reasons shall be announced to the employee (and signed by the latter) within five days from the date of issue, excluding the time when the employee is (i) ill or caring for a sick family member (confirmed by a sick list or by a certificate of temporary incapacity for work), (ii) on vacation; (iii) on military or special training. If employee has not been informed and familiarized with the order (instruction, decision, resolution, minutes) within the specified term, shall be deemed not to receive a disciplinary sanction.

Please note that the above deadlines are not subject to extension.

5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:

a. Conducting interviews?

With regard to personal data: under the current laws, in order to collect, process, and store personal data, it is necessary to receive written consent of the relevant person.

Please note that the draft Law on Personal Data has passed the first reading by the lower chamber of the Belarusian Parliament in June 2019. However, the law still has not passed the second reading and is not expected to be adopted earlier than by the end of 2021. The draft provides for a one year period to take effect, so it is not expected for this law to enter into force before the end of 2022. Therefore, this article is based on the law currently in force and will need to be updated if and when the Law on Personal Data comes into force.

With regard to state secrets: receiving such information requires a permit of the respective state authorities.

With regard to other types of information: receiving information constituting trade secrets requires consent of the holder of such information – the person possessing trade secrets may only provide information about the holder of these trade secrets.

There may also be other types of specific information, access to which is limited by local law (e.g., professional secrets).

b. Reviewing emails?

Generally, there are no requirements under Belarusian law to be taken into account before reviewing corporate emails. Despite the right of privacy of correspondence and information about private life is granted and protected by the Belarusian Constitution, neither law enforcement practices nor the legal doctrine clearly specify that it covers emails on corporate devices.

Therefore, if there is a risk that corporate devices contain private correspondence or information about private life of the employees, especially if the company does not have written policies prohibiting the storage of such data on corporate devices, it is highly advisable to request for a prior written consent of the employee in order to avoid the risks of criminal liability for unauthorized access to this data.

c. Collecting (electronic) documents and/or other information?

The same rules as described in sections (a) and (b) above apply.

d. Analyzing accounting and/or other mere business databases?

There are no special limitations, as long as accounting and other business databases contain only company business information.

6. Do any specific procedures need to be considered in case a whistle-blower report sets off an internal investigation (e.g., for whistle-blower protection)?

There are no specific regulations and procedures for whistle-blowers protection under Belarusian law in case of an internal investigation.

The situation is different for criminal investigations. The law provides a mechanism for the protection of persons taking part in criminal proceedings – the respective measures include procedural means of protection (non-disclosure of personal information, closed court session, exemption from the requirement to appear in court) or other means (including the use of technical control, personal, home and property security, and prohibition on release of information).

In cases of corruption, an individual who reports an offense that creates conditions for corruption, a corruption offense, or otherwise contributes to the detection of corruption, is protected by the state. The guarantee for applying security measures in accordance with the procedure established by legislative acts is provided for the individual who contributes to the detection of corruption, his or her spouse, and close relatives.

7. Before conducting employee interviews in your country, must the interviewee:

a. Receive written instructions?

This is not required by law.

b. Be informed that he/she must not make statements that would mean any kind of self-incrimination?

In case of internal investigation, it is not required by law to make such a prior warning. In case of administrative or criminal investigation, the interviewee must be informed about the right not to make self-incriminatory statements.

c. Be informed that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee (so-called Upjohn warning)?

This is not required by law.

d. Be informed that they have the right to have their lawyer attend?

In case of internal investigation, it is not required by law. Conversely, in case of administrative or criminal investigation, the interviewee must be informed about the right to have his or her lawyer to attend.

e. Be informed that they have the right to have a representative from the works council (or other employee representative body) attend?

This is not required by law.

f. Be informed that data may be transferred across borders (in particular to the United States of America)?

Currently, Belarusian law (Law No. 455-З *Закон об информации, информатизации и защите информации*) does not clearly say if a data subject's consent is required for the cross-border transfer. It is recommended to receive the employee's written consent for such a transfer, rather than just to inform him/her about the potential transfer.

g. Sign a data privacy waiver?

Under the current laws, in order to process (i.e., collect, process or store) personal data, it is necessary to receive written consent of the relevant person.

h. Be informed that the information gathered might be passed on to third parties, including local or foreign authorities?

Transfer of personal or private data to authorities (as well as to any other third parties) is subject to the employee's consent (unless gathered information shall be passed to the local state authorities due to statutory requirements). In relation to other types of information, there is no formal requirement to inform the employee that the information might be passed to authorities.

i. Be informed that written notes will be taken?

This is not required by law.

8. Are document-hold notices or document-retention notices allowed in your country? Are there any specific rules that need to be followed (point in time, form, sender, addressees)?

Belarusian law does not specially regulate document-retention notices. However, their use is not prohibited and employers can implement document retention procedures by issuing mandatory internal orders indicating the employee's obligation to preserve the documents, prevent the deletion or destruction of relevant information and records, etc.

9. Can attorney-client privilege (legal advice privilege) be claimed over findings of the internal investigation? What steps may be taken to ensure privilege is maintained?

Yes, attorney-client privilege may be claimed over findings of the internal investigation.

Information covered by the attorney-client privilege cannot be obtained from an attorney (licensed advocate), as well as trainee attorneys and assistants and used as evidence in criminal, civil, economic and administrative procedures. An attorney, trainee, or attorney's assistant cannot be interviewed as witnesses on facts that constitute part of the attorney-client privilege. Similarly, government agencies and other organizations cannot request, seize, or otherwise obtain information from an attorney, trainee, or attorney's assistant that fall within the attorney-client privilege.

At the same time, Belarusian law does not fully regulate the preservation of the attorney-client privilege in criminal proceedings. This is because the Belarusian Code of Criminal Procedure does not provide for any specific measure on the search and seizure in the attorneys' premises, inspections and seizure of the attorneys' materials, nor does it provide for prohibition of interrogation of an attorney on the matters constituting the attorney-client privilege.

On the other hand, the provision of financial information, subject to special control by individuals and entities conducting financial transactions, to the financial monitoring authority in accordance with the provisions of anti-money laundering law, should not be regarded as violating the secrets protected by law, including the attorney-client privilege.

10. Can attorney-client privilege also apply to in-house counsel in your country?

No, attorney-client privilege is applicable only towards persons who have received a license to act as an "advocate". External lawyers who do not have such a license are not covered by the attorney-client privilege. In-house lawyers are also not covered by the attorney-client privilege, because a person who obtained an advocate license can work as an advocate only in an advocate bureau or self-employed.

11. Are any early notifications required when starting an investigation?

a. To insurance companies (D&O insurance, etc.) to avoid losing insurance coverage.

Not required by law. However, the obligation of notification may be included as a term into the insurance contract.

b. To business partners (e.g., banks and creditors).

Not required by law. However, such a requirement can be provided in contracts with business partners.

c. To shareholders.

Not required by law. However, articles of incorporation, shareholder agreements or by laws may contain such a requirement.

d. To authorities.

Please see the response to the question 2c (regarding investigating accidents at work). In other cases it is not required by law.

12. Are there any other immediate measures that have to be taken in your country, or would be expected by the authorities once an investigation starts, e.g., any particular immediate reaction to the alleged conduct?

There are no immediate measures that have to be taken in Belarus or would be expected by the authorities once an investigation has started.

13. Is there a duty to self-report the discovered misconduct to prosecuting authorities?

If the internal investigation results in identifying breaches creating conditions for corruption or facts of corruption, the relevant CEO must transfer this information to the respective anti-corruption authorities within 10 days from the moment of its discovery.

Failure to communicate information about events of corruption to the respective anti-corruption authorities leads to unconditional disciplinary sanctions for the CEO including his/her dismissal, as well as to the administrative liability in the form of a fine for the CEO in the amount of up to 20 basic units (around US$220).

According to the procedure established by the Council of Ministers, the individual who contributes to the detection of corruption, has a right to receive monetary remuneration from the state. However, there is no practice regulating the receipt of such remuneration. As of January 2021, we are not aware of remuneration payment cases to individuals.

14. If local prosecuting authorities become aware of an internal investigation, would they interfere in it, or ask for specific steps to be followed?

As a general rule, local prosecutors are not concerned with internal investigations conducted by companies in Belarus. On the other hand, should a criminal case be initiated against employees, directors or shareholders of the company, the prosecuting authorities may use the information received from the internal investigation's report as evidence in criminal proceedings.

15. Please describe the legal prerequisites for search warrants or dawn raids on companies in your country. If the prerequisites are not fulfilled, can the evidence gathered still be used against the company?

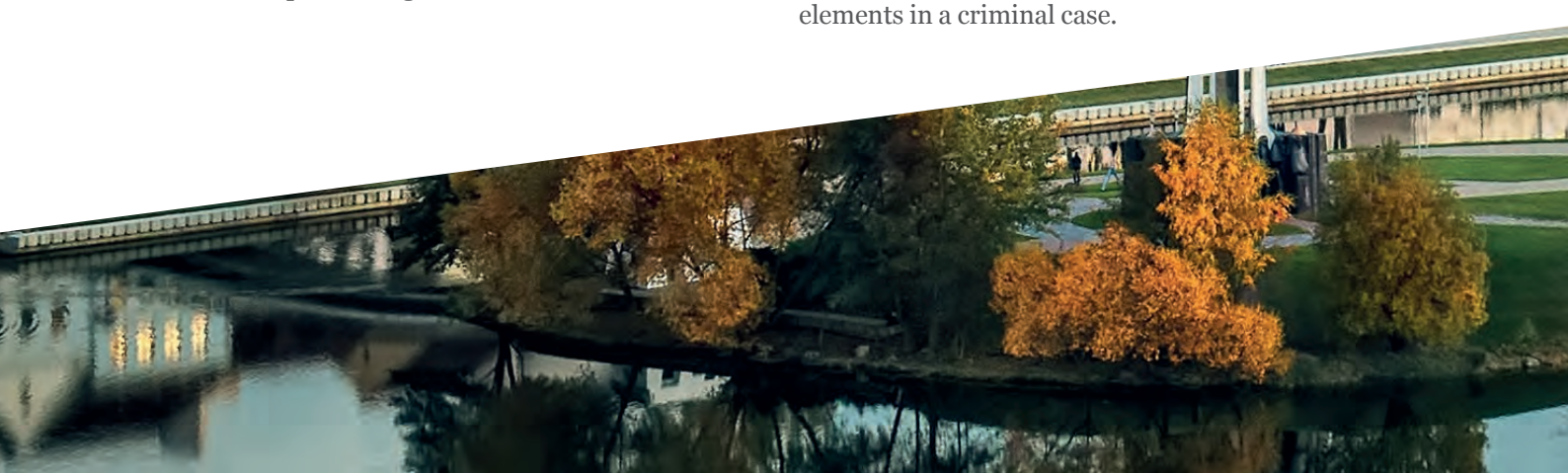
Under the Belarusian Code of Criminal Procedure, a search warrant can only be issued if there are sufficient grounds to believe that in the premises of the company can be found instruments of crime, objects, documents or valuables that may be relevant to a criminal case. The search warrant is issued by the investigator or investigative agency and must be sanctioned by the prosecutor or his deputy.

At the same time, if there is a risk that the object relevant to the criminal case may be damaged, the investigator or investigative agency can act without the prior sanction from the prosecutor or his deputy. In such a case the investigator or investigative agency must still inform the prosecutor about the search conducted within 24 hours.

In any case, the authorities are not obliged to inform in advance the company about the search.

With regards to "dawn raids", these can be organized only upon the orders of the particular state authorities on the grounds specified in the relevant legislation. For example, the President or the Council of Ministers may order a dawn raid of a company suspected of misuse of state budget funds or state property. During such dawn raids, the state authorities can also conduct searches and seizures.

Evidence obtained illegally does not have legal force and cannot be used as a basis for the prosecution, as well as to prove any of the required elements in a criminal case.



16. Would voluntary self-disclosure or cooperation with state authorities help avoid or mitigate liability? What are the requirements to obtain the cooperation credit?

The range of circumstances that can be recognized as mitigating factors for administrative or criminal liability is not limited by law and includes, among others, voluntary self-disclosure, cooperation with state authorities, sincere repentance.

Alternatively, criminal liability could also be mitigated by concluding a "Pre-trial Cooperation Agreement" with the prosecutor. Specifically, in case a person who has committed a crime fulfils the obligations provided under the Agreement, the term or amount of the criminal penalty, as a general rule, may not exceed half of the maximum term or the amount of the most severe type of basic punishment provided for in the relevant article of the Belarusian Criminal Code.

The grounds for exemption from criminal liability, among others, are provided for the following cases:

- A person who gave the bribe voluntarily pleads guilty and actively contributes to the disclosure and/or investigation of the crime.
- A person who financed terrorist activities pleads guilty in a timely manner, and/or by other means contributes to the prevention of terrorist act and its detection.
- A person who participated in the legalization of funds obtained by criminal means, voluntarily pleads guilty and actively contributes to the disclosure of the crime.

17. Are deals, non-prosecution agreements, or deferred prosecution agreements available and common for corporations in your jurisdiction?

No. Deals, non-prosecution agreements or deferred prosecution agreements are not available for corporations in Belarus.

18. What types of penalties (e.g., fines, imprisonment, disgorgement, or debarment) could companies, directors, officers, or employees face for misconduct of (other) individuals of the company?

Companies cannot be held criminally liable and therefore are subject only to administrative penalties for the misconduct of its individuals, including:

i. warnings;
ii. fines;
iii. debarment; and
iv. confiscation.

At the same time, criminal liability of individuals includes the following penalties:

i. fines;
ii. compulsory community service;
iii. debarment (i.e., deprivation of right to engage in a particular activity);
iv. corrective or compulsory labor;
v. arrest;
vi. restriction of liberty; and
vii. imprisonment.

The imposition of an administrative penalty on a company does not exempt its employees from administrative or criminal liability for the same offense and vice versa.

19. Can penalties for companies, their directors, officers, or employees be reduced or suspended if the company can demonstrate an efficient compliance system? Does this only apply in cases where efficient compliance systems have been implemented prior to the alleged misconduct?

No, it is not possible under Belarusian law to reduce or suspend the penalty by implementing an efficient compliance system.

20. Please briefly describe any investigation trends in your country (recent case law, upcoming legislative changes, or special public attention on certain topics).

Since January 1, 2018 the Presidential Decree on Measures to Improve Control (Supervisory) Activities (Decree No. 376 *Декрет о мерах по совершенствованию контрольной (надзорной) деятельности*) has contributed to reduce the amount of inspections and limit the grounds for conducting them. The Decree changed the approach from periodic inspections to assessment of the high risk of violations of the law.

In August 2019, the President initiated a discussion about the quality of crime detection and investigation by law enforcement agencies. The President held meetings with government officials to discuss the quality of preliminary inquiries and preliminary investigations. Over the course of the meetings a number of gaps were detected, and authorities were advised on the necessary steps to be taken in order to improve the situation, which include the following:

- To take proper measures to collect and evaluate evidence.
- To shorten the length of preliminary investigations.

On May 10, 2019, the Presidential Decree on Additional Measures to Combat Corruption (Decree No. 3 *Декрет о дополнительных мерах по борьбе с коррупцией*) was issued. The Decree strengthened criminal liability for corruption offenses by prohibiting the provision of parole for certain types of corruption offenses, including bribery.

On July 1, 2019, amendments and additions to the Law on Public Procurement of Goods (Services and Works) (Law No. 419-З *Закон о государственных закупках товаров (работ, услуг)*) entered into force. These amendments were implemented to ensure transparency in the use of budget funds by creating an electronic governmental 'information-analytical system'.

On January 6, 2021 the Law on Operational-Search Activity (Law No. 307-З *Закон об оперативно-розыскной деятельности*) was amended. The amendments allowed individuals to participate in operational search activities conducted by authorities, carrying out intelligence activities, on a confidential basis under special assignment. Such special assignment must be approved by the official of the authority carrying out intelligence activities The amendments will come into effect from April 15, 2021.

Regarding cases of special public attention, on December 27, 2019 Minsk City court found 20 individuals, from the medical sector, guilty of corruption. Government officials were found guilty for taking bribes from individuals from private pharmaceutical companies in return for prescribing/using their medicines and equipment. The amount of bribes ranged from US$55 up to US$45,000. Government officials as well as bribe givers were sentenced to fines and/or imprisonment while some bribers were exempted from criminal liability having cooperated with investigators.

This is one of the most notorious cases of corruption in the Republic of Belarus in the past 10 years, as it involved corruption on both sides: individuals from private companies, and government officials from the Ministry of Healthcare. Despite the fact that there is no further information in relation to investigations within the pharmaceutical sector, we expect that the activities of pharmaceutical companies over the next year are likely to be under the close scrutiny of controlling authorities.

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Alexey has acquired unique experience in acting as the General Advisor to the CIS Economic Court and delivering expert reports to the EurAsEC Court in cases related to investment and arbitration. He is also designated to the ICSID Panel of Arbitrators and to the register of experts for resolution of CIS disputes by Belarus.

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Maria is a senior associate and a trial counsel skilled in handling contentious matters at both national and international levels, as well as regulatory and corporate crime investigations. She also heads the Compliance practice at Sorainen Belarus. With over 12 years of experience resolving complex, high-profile disputes, she always aims to produce creative, pragmatic solutions and to manage clients' risk in an increasingly challenging legal environment. Being equipped with advanced legal, commercial and policy knowledge as well as sectoral expertise, Maria is particularly skilled at handling disputes under the Vienna Convention on Contracts for the International Sale of Goods, competition and regulatory disputes. She is also experienced in providing tailored advice in bankruptcy proceedings, including acting on the creditors' committee board, protecting creditors' claims and effectively defending the interests of minority creditors. Maria is praised by her clients for focusing on details and thinking tactically to achieve the best result, being always available to provide immediate advice promptly on urgent matters.

In 2015 Maria was recognized as Best Lawyer for Dispute Resolution according to the Acquisition International Magazine.

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Maria is an associate specializing on matters related to civil, customs and family law. Extensive experience in a diverse range of disputes allows Maria to identify the optimal strategy in every case, be it a dispute between a company's founders or parties to a supply contract. Her experience includes concluding amicable agreements, applying to simplify and expedite proceedings, and in recognition and enforcement of foreign judgements.

Maria often deals with the peculiarities of insolvency proceedings and has a strong record in guiding these. She has taken part in filing and protecting creditors' claims, meetings with creditors, and managing debtors' property sale issues.

Frequently, she also takes responsibility for controlling enforcement proceedings and ensuring the process is organized with maximum efficiency. She is often involved in enforcement measures to be taken against debtors, as well as successfully challenging inaction by enforcement officers.

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Aliaksei helps the dispute resolution team in representing firm's clients in all types of litigation as well as advising on initiation and supervision of insolvency proceedings in Belarus.

He has already gained extensive experience in litigation in Belarus. Being part of the team dealing with complex matters, including Supreme Court cases, enables him to use his knowledge to help our clients succeed.

He has been engaged in advising foreign clients on insolvency proceedings of large Belarusian companies, including active participation in creditors' meetings on the side of the clients as well as in protection of clients' interests in court.

Georgia

Contributed by BGI Legal

	Corporate liability	Public bribery	Commercial bribery	Extraterritorial applicability of criminal laws	Adequate procedures defense
Yes	✓	✓	✓	✓	
No					✗

1. What are the laws relating to anti-corruption, bribery, and money laundering in your country?

In Georgia, the following laws are applicable to anti-corruption, bribery, and money laundering issues:

- Criminal Code of Georgia (*საქართველოს კანონი საქართველოს სისხლის სამართლის კოდექსი*).
- Law of Georgia on Conflict of Interests and Corruption in Public Service (Law No. 982 *საქართველოს კანონი საჯარო დაწესებულებაში ინტერესთა შეუთავსებლობისა და კორუფციის შესახებ*).
- Law on Facilitation of Prevention of Money Laundering and Terrorism Financing (Law No. 5226-Iს *საქართველოს კანონი ფულის გათეთრებისა და ტერორიზმის დაფინანსების აღკვეთის ხელშეწყობის შესახებ*).

2. Do the following persons or bodies have the right to be informed, or is the company obliged to inform the following persons/ bodies, about an internal investigation before it is commenced? Do they have the right to participate in the investigation (e.g., in interviews)?

a. Employee representative bodies, such as a works council or union.

There is no explicit legal obligation to inform labor unions or other employee representative bodies about an internal investigation unless the internal regulations of the company provide otherwise.

However, it is noteworthy that pursuant to the latest amendments to the Labor Code of Georgia (*საქართველოს შრომის კოდექსი*) in an enterprise with no less than 50 employees on a regular basis, the employer is obliged to provide information and consultations.

In addition, employees' rights to information and consultation can be exercised through an employee representative.

Furthermore, the employer is obliged to provide information to the employees' representatives and consult with them on the following issues:

i. on the existing and possible development in relation to the activities and economic situation of the enterprise;

ii. the employment situation, structure, possible development, and planned activity in the enterprise, which may have a significant impact on the employees' remuneration and working conditions and/or threaten the continuation of the employment relationship;

iii. a decision that may lead to substantial changes in the organization of labor.

Since these amendments were adopted recently and there is no interpretation whether internal investigation would fall within any of the mentioned categories, it cannot be affirmed that the employer has an obligation to inform employee representative bodies about the internal investigations. However, in case internal investigation falls within one of the said categories, then the employer will be obliged to inform the employees' representative bodies about it.

It is also established that the employer has the right to refuse to provide information or to hold a consultation if based on substantiated grounds the information/ consultation significantly interferes with the operation of the enterprise or damages it. Employees' representatives on the other hand, have the right to appeal the refusal in court. If the employer's refusal is not objectively substantiated, the court has the power to instruct the employer to provide information or to hold consultation.

b. Data protection officer or data privacy authority.

There is no legal obligation to inform a data protection officer or data privacy authority about an internal investigations itself, however, if the company has to process data during the investigation, that, under the Law of Georgia on Data Protection (Law No. 5669-რს საქართველოს კანონი პერსონალურ მონაცემთა დაცვის შესახებ), is subject to notification to the State Inspector's Service., then the employer should notify the State Inspector's Service.

c. Other local authorities.

If the company finds out during the internal investigation that there are grave crimes/ especially grave crimes (including financial crimes) enshrined in the Criminal Code of Georgia are committed, it must report such crimes to law enforcement authorities. In addition, according to Law on Facilitation of Prevention of Money Laundering and Terrorism Financing (Law No. 5226-Iს), certain organizations, including companies involved in financial services, law firms, audit firms, notaries, public institutions, etc. must report financial crimes and suspicious transactions to the respective authority depending on the relevant sector or industry. Such authorities include the Service for Accounting, Reporting and Auditing Supervision of the Ministry of Finance of Georgia, the Georgian Bar Association, the National Bank of Georgia, the Ministry of Justice of Georgia, the Ministry of Finance of Georgia, and LEPL State Insurance Supervision Service of Georgia.

What are the consequences of non-compliance?

Non-compliance with personal data protection obligations may lead to various administrative sanctions, including monetary fines ranging from GEL 100 (around US$ 35) to thousands of GEL, depending on the type and extent of violation. As a general rule, the first breach of the data protection requirements rarely results in any monetary sanction. Instead, the regulator (inspector) issues a warning to the respective entity, listing measures to be taken for compliance with the applicable requirements. If there are repeated breaches, or a failure to correct an existing breach, monetary sanctions shall be applied. A breach of the data protection legislation which results in material damages may result in criminal liability.

Failure to report a crime if such obligation applies to the person may result in criminal liability. The details when the obligation of reporting a crime exists are discussed in section 13 below.

3. Do employees have a duty to support the investigation, for instance by participating in interviews? Is there anything a company can do to require employees to support an investigation (e.g., advance consents)? Can companies impose disciplinary measures if an employee refuses to cooperate?

There is no statutory obligation for employees to cooperate or support internal investigations. Therefore, they should not be imposed sanctions for refusing to be interviewed. Companies are allowed to include provisions envisaging the employee's obligation to support the internal investigation together with details about the possible punishments or disciplinary measures in case of non-compliance. Although such express consent of an employee on cooperation may be included in employment contracts, internal regulations or policies, the enforceability of such provisions is questionable. As a result of this, any subsequent disciplinary measures could be successfully challenged in court.

4. Can any labor law deadlines or statute of limitations be triggered, or any rights to sanction employees be waived, by investigative actions? How can this be avoided?

There is no statute of limitation for investigative action or the sanctioning of employees. However, in practice, if the employer sanctions the employee with a big delay (e.g., two years later) and the sanction results in the termination of the employment contract, the court may consider that this is a bad faith action from the employer and an abuse of its rights. However, this should be considered on a case-by-case basis.

5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:

a. Conducting interviews?

There is no regulation with regard to this issue.

b. Reviewing emails?

Before reviewing emails which include the personal data of different people, an employer has to take into account the requirements of the Law of Georgia on Data Protection (Law No. 5669-რს). As advised by the State Inspector's Service of Georgia, the employer should develop a policy for employees addressing email communications where it will be indicated that the company has the power to control or review corporate emails (including personal emails in the corporate mailbox

c. Collecting (electronic) documents and/or other information?

If the document or information under examination contains personal data, the company must process such personal data in accordance with the regulation as established by the Law of Georgia on Data Protection (Law No. 5669-რს).

Pursuant to this law, data processing shall be permitted only if:

i. there is consent of a data subject;
ii. data processing is provided for by law;
iii. data processing is necessary for a data controller to perform his/her statutory duties;
iv. data processing is necessary to protect vital interests of a data subject;
v. data processing is necessary to protect legitimate interests of a data controller or a third person, except when there is a prevalent interest to protect the rights and freedoms of the data subject;
vi. according to the law, data are publicly available or a data subject has made them publicly available;
vii. data processing is necessary to protect a significant public interest under the law; and
viii. data processing is necessary to deal with the application of a data subject (to provide services to him/her).

d. Analyzing accounting and/or other mere business databases?

The requirements stipulated in paragraph c also apply to this section.

6. Do any specific procedures need to be considered in case a whistle-blower report sets off an internal investigation (e.g., for whistle-blower protection)?

There are no specific procedures that need to be considered in instances where a whistle-blower report sets off an internal investigation in a private company.

In Georgia, however, the Law of Georgia on Conflict of Interests and Corruption in Public Service (Law No. 982) envisages specific regulations for whistle-blower protection that only applies to (current or former) civil servants. In other words, these rules are not relevant to whistle-blowers in the private sector.

7. Before conducting employee interviews in your country, must the interviewee:

a. Receive written instructions?

No, it is not necessary for the employee to receive written instructions. However, if the company intends to use the interview report, recording or other material created as a result of an interview as evidence, it is recommended the employee be provided with written instruction. Having the written instruction may help the employer to prove that the process of obtaining evidence (an interview) was fair and transparent without pressure or other unlawful interference. This will reduce the risk of the challenge of evidence.

b. Be informed that he/she must not make statements that would mean any kind of self-incrimination?

It is not mandatory for the employee to be informed by an employer that he/she must not make statements that would lead to any kind of self-incrimination, however, it is recommended due to reasons discussed in paragraph "a" of this section.

c. Be informed that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee (so-called Upjohn warning)?

Although it is not mandatory, it is advisable to inform the employee that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee. If necessary, the fact that the employee was provided with this information will

i. aid the company in proving that the interview process was fair and transparent; and

ii. avoid the successful challenge of the evidence created as a result of an interview.

d. Be informed that they have the right to have their lawyer attend?

Not required by law, however, it is recommended since it will make the whole process fairer and more transparent.

e. Be informed that they have the right to have a representative from the works council (or other employee representative body) attend?

It is not required by law, however, a collective agreement may include this type of provision.

f. Be informed that data may be transferred across borders (in particular to the United States of America)?

No, not required by law, however, it is recommended since one of the grounds for data processing including data transfer according to the Law of Georgia on Data Protection (Law No. 5669-რს) is the consent of the data subject. Therefore, the transfer will be impossible to be carried out without the consent of the data subject unless there are other grounds for data processing under the Law of Georgia on Data Protection (Law No. 5669-რს).

The grounds when the consent is not required, are the following:

i. there is a consent of a data subject;

ii. data processing is provided for by law;

iii. data processing is necessary for a data controller to perform his/her statutory duties;

iv. data processing is necessary to protect vital interests of a data subject;

v. data processing is necessary to protect legitimate interests of a data controller or a third person, except when there is a prevalent interest to protect the rights and freedoms of the data subject;

vi. according to the law, data are publicly available or a data subject has made them publicly available;

vii. data processing is necessary to protect a significant public interest under the law;

viii. data processing is necessary to deal with the application of a data subject (to provide services to him/her).

ix. (ix) the data transfer is part of a treaty or an international agreement of Georgia; and

x. a data processor provides appropriate guarantees for the protection of data and of fundamental rights of a data subject on the basis of an agreement between a data processor and the respective state, a natural or legal person of this state or an international organization.

Hence, receiving consent on possible transfer before the interview is started will help the company to process data if necessary.

g. Sign a data privacy waiver?

It is not mandatory, but it is recommended, as having such a waiver may help the company to process data if it becomes necessary.

h. Be informed that the information gathered might be passed on to third parties, including local or foreign authorities?

The regulations as described in paragraph "f" above are applicable here as well.

i. Be informed that written notes will be taken?

It is not required by law directly, however, it is advisable. If the process is challenged by someone, the fact that the employee was informed on written notes will aid the company to prove that the whole process of an interview was fair.

8. Are document-hold notices or document-retention notices allowed in your country? Are there any specific rules that need to be followed (point in time, form, sender, addressees)?

There are no specific regulations under employment law addressing document-hold notices or document-retention notices in Georgia.

9. Can attorney-client privilege (legal advice privilege) be claimed over findings of the internal investigation? What steps may be taken to ensure privilege is maintained?

Georgian legislation recognizes the attorney-client privilege that covers information provided by a client to an attorney (an advocate) who is admitted to the Georgian Bar (i.e., is a member of the Georgian Bar Association) over the course of the attorney-client relationship. In practice, this means that the attorneys are not allowed to disclose such information to third parties, including the state (prosecuting) authorities. Hence, attorneys may argue that the information collected during the internal interrogation is covered by privilege and, therefore, protected by law.

Since the duty not to disclose information is applicable only to attorneys and not to other individuals to protect confidentiality, the company should sign the Non-Disclosure Agreements with other persons. Under such agreement, those persons will be bound by a confidentiality obligation as well. Although Non-Disclosure Agreements themselves cannot be used by their parties as a ground to refuse interrogation and/or provide the investigation with the relevant information within criminal proceedings, it can be invoked by the parties outside the scope of the criminal proceedings (e.g., in commercial relations, etc.) for denying to share with anyone the respective information.

10. Can attorney-client privilege also apply to in-house counsel in your country?

There are no clear rules or case law with respect to this issue.

11. Are any early notifications required when starting an investigation?

a. To insurance companies (D&O insurance, etc.) to avoid losing insurance coverage.

There is no specific regulation with regard to starting an internal investigation, however, according to the Civil Code of Georgia (*საქართველოს კანონი საქართველოს სამოქალაქო კოდექსი*), the insured person shall inform the insurer of all circumstances that can be material to the occurrence of the danger or event covered by the insurance. In addition, insurance agreements usually include specific provisions on this particular issue.

b. To business partners (e.g., banks and creditors).

Not required by law.

c. To shareholders.

There is no specific regulation regarding the notification of shareholders when starting an investigation. Therefore, this will depend on the company's articles of incorporation or other internal documents. If the company is a commercial bank, it is best practice of corporate governance that the shareholders should be informed by directors or the supervisory board if an event that triggers an investigation is materially disadvantageous to the company i.e., the event will substantially affect the ordinary course of business.

d. To authorities.

There is no legal obligation to provide prior notice regarding starting an investigation to authorities. However, in some cases when there is an alleged criminal offense or violation of regulatory or environmental requirements, it might become necessary to give notice to the respective authority.

12. Are there any other immediate measures that have to be taken in your country, or would be expected by the authorities once an investigation starts, e.g., any particular immediate reaction to the alleged conduct?

As mentioned above, Georgia does not have specific requirements for conducting internal investigations. Therefore, as soon as the misconduct is discovered, the company may take immediate and relevant legal measures as necessary to mitigate possible damage.

13. Is there a duty to self-report the discovered misconduct to prosecuting authorities?

If the respective representative of the company discovers during the investigation that a grave or especially grave crimes enshrined in the Criminal Code of Georgia are committed by an employee, it shall inform law enforcement authorities about that.

Failure to comply with this obligation may result in criminal liability of the respective person.

If, after committing a crime, the offender appears and pleads guilty, actively assists in the discovery of a crime and there are no aggravating circumstances, the term or measure of the sentence shall not exceed three quarters of the maximum term or measure of the most severe sentence prescribed under the relevant article or part of an article of the special part of the Criminal Code of Georgia.

14. If local prosecuting authorities become aware of an internal investigation, would they interfere in it or ask for specific steps to be followed?

As previously mentioned, there is no regulation with respect to an internal investigation in Georgia which means that there are no guidelines regarding interaction with prosecuting authorities during the internal investigation. However, if the prosecuting considers that there is a crime allegedly committed by someone, he/she will be allowed to start an official public investigation, interfere in an internal investigation, and ask for specific steps including providing any and all documents regarding the circumstances under investigation.

15. Please describe the legal prerequisites for search warrants or dawn raids on companies in your country. If the prerequisites are not fulfilled, can the evidence gathered still be used against the company?

In Georgia, a search must be conducted based on a court ruling authorizing search (a search warrant) or, in the case of urgent necessity, based on a decree of an investigator. If, however, the search is carried out under urgent necessity without the court order, the prosecutor shall, within 24 hours after initiating the above investigative action, notify a judge and ask for finding the conducted investigative action as lawful. If the court fails to approve the search, all materials seized as a result of the search will be deemed inadmissible and unable to be used against the person.

According to the Criminal Procedure Code of Georgia, when the search is conducted under the warrant issued by the court, it shall include:

i. the date and place of its preparation;
ii. the surname of the judge;
iii. the person who filed the motion on search;
iv. a decree on conducting investigative action with a specific reference to its essence and persons it applies to;
v. validity period of the warrant;
vi. the person or body responsible for execution of the warrant; and
vii. the signature of the judge (including an electronic signature).

In addition, the warrant ordering a search or seizure shall also include:

i. the information on movable and immovable property where an investigative action is permitted, and the natural or legal person that possess the property (if his/her identity is known);
ii. the natural person who is to be searched personally; and
iii. a thing, item, substance or any other object likely to be discovered and seized during a search or seizure, and its generic characteristics, and the right to use a proportional coercive measure when a resistance takes place.

If the above prerequisites are not fulfilled, the defendant may request the evidence to be seized as a result of a search to be declared inadmissible.

If so ordered by the Minister of Internal Affairs of Georgia, the police are allowed to conduct the dawn raids. Under this measure, the police can carry out inspection and examination of a person, of an item, or a vehicle on the territory or at a facility. If the police officer discovers suspicious activities or items during the inspection, a police officer will be allowed to conduct a search. In this case, the above procedures for search are applicable.

16. Would voluntary self-disclosure or cooperation with state authorities help avoid or mitigate liability? What are the requirements to obtain the cooperation credit?

The Criminal Procedure Code of Georgia (*საქართველოს სისხლის სამართლის საპროცესო კოდექსი*) allows a prosecutor to enter into a plea bargain with the accused person if he/she commits to provide the investigation with useful information regarding investigation or wrongdoings. Based on a plea bargain, a prosecutor may request the reduction of the sentence for the accused, or, in case of multiple offenses, make a decision to mitigate or partially remove the charges.

However, in addition to the cooperation with law enforcement authorities, when taking decision on the plea bargain the prosecutor shall take into account the following circumstances:

i. crime committed and the gravity of the potential sentence;
ii. the nature of the crime;
iii. the degree of culpability;
iv. public danger posed by the accused;
v. personal characteristics; and
vi. record of conviction and the assessment of the conduct of the accused with respect to the indemnification of damages caused as a result of the crime.

17. Are deals, non-prosecution agreements, or deferred prosecution agreements available and common for corporations in your jurisdiction?

A plea agreement is available for corporations, however, it is very uncommon.

18. What types of penalties (e.g., fines, imprisonment, disgorgement, or debarment) could companies, directors, officers, or employees face for misconduct of (other) individuals of the company?

The Labor Code of Georgia (*საქართველოს შრომის კოდექსი*) does not provide regulations on the issue of disciplinary measures that can be used in case of misconduct of directors, officers or employees. Therefore, the issue should be resolved by the employment contract or internal regulations of the companies.

If the profession of an employee under breach needs the special license or is subject to other regulation of the state, employment of such person may be suspended or terminated depending on the type and nature of the breach.

Pursuant to the Code of Administrative Offences of Georgia (Law No. 161 *საქართველოს კანონი საქართველოს ადმინისტრაციულ სამართალდარღვევათა კოდექსი*), the following administrative penalties may apply to companies, officers, or employees for committing respective administrative offenses:

i. warning;
ii. fine;
iii. the compensated seizure of an item that was an instrument or material object of an administrative offense or an object of violation of the rules for movement of goods across the customs border of Georgia defined by the tax legislation of Georgia or the means of transportation and delivery of goods;
iv. confiscation of an item that was an instrument or material object of an administrative offense or an object of violation of the rules for movement of goods across the customs border of Georgia defined by the tax legislation of Georgia, or the means of transportation and delivery of goods;
v. suspension of the right to drive a motor vehicle granted to a citizen;
vi. deprivation of the right to carry arms;
vii. corrective labor; and
viii. administrative detention.

As to criminal liability and penalties for criminal offenses, according to the Criminal Code of Georgia, the companies may face the following sentences:

i. liquidation;
ii. deprivation of the right to carry out activities;
iii. fine; and/or
iv. confiscation of property.

If the criminal offense is committed by the individual (director, officer, employee), the following types of sentences can be used against him/her:

i. fine;
ii. deprivation of the right to occupy an official position or to carry out a particular activity;
iii. community service;
iv. corrective labor;
v. service restrictions for military personnel;
vi. restriction of liberty;
vii. fixed-term imprisonment;
viii. life imprisonment; or
ix. confiscation of property.

19. Can penalties for companies, their directors, officers, or employees be reduced or suspended if the company can demonstrate an efficient compliance system? Does this only apply in cases where efficient compliance systems have been implemented prior to the alleged misconduct?

This issue is not regulated in Georgia and, therefore, there is no clear answer to this question.

20. Please briefly describe any investigation trends in your country (e.g., recent case law, upcoming legislative changes, or special public attention on certain topics).

On October 30 2019, the Parliament of Georgia adopted the Law on Facilitating Prevention of Money Laundering and Terrorism Financing (Law No. 5226-Iს).

The Law on Facilitating Prevention of Money Laundering and Terrorism Financing (Law No. 5226-Iს) has been adopted in response to the Financial Action Task Force Recommendations and is part of Georgia's committed approximation process with EC directives. The new law expands the list of persons subject to regulation to include law firms, insurance brokers, and certified accountants. It also provides more comprehensive measures which must be implemented for AML and anti-terrorism financing purposes. These include customer due diligence measures for identifying the clients and beneficiaries and monitoring business relationships. Regardless of the amount of a transaction, customer due diligence measures are now mandatory if a business relationship is formed.

The Law on Facilitating Prevention of Money Laundering and Terrorism Financing (Law No. 5226-Iს) also identifies higher and lower risk areas which call for enhanced or simplified preventive measures, respectively. The Law on Facilitating Prevention of Money Laundering and Terrorism Financing (Law No. 5226-Iს) provides that "suspicious" transactions, as well as other cases prescribed under the same law, must be reported to Financial Monitoring Service of Georgia ("FMS").

Also, the President of the National Bank adopted Order 208/04 which prescribes rules for publication of information on violations and sanctions imposed on financial institutions for breaching AML regulations. The information will be published on the website of the National Bank of Georgia. At the first stage, published information will only indicate the financial sector to which the breach pertains as well as the type of violation and imposed sanctions.

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Kazakhstan

Contributed by Unicase Law

	Corporate liability	Public bribery	Commercial bribery	Extraterritorial applicability of criminal laws	Adequate procedures defense
Yes		✓	✓	✓ Yes, Kazakh criminal laws shall apply extraterritorially if a crime is committed against the citizens of the Republic of Kazakhstan, persons without citizenship, permanently residing on the territory of the Republic of Kazakhstan, in cases of terrorist or extremist crimes or crimes against the peace and security of mankind or causing other serious harm to the vital interests of the Republic of Kazakhstan.	
No	✗ No, companies cannot be held criminally liable, but can be subject to administrative liability.				✗

1. What are the laws relating to anti-corruption, bribery, and money laundering in your country?

There are a number of related regulations, such as the Criminal Code dated July 3 2014, the Criminal Procedure Code dated July 3 2014, the Code on Administrative Offenses dated July 5 2014, Anti-Corruption Law dated November 18 2015 and Anti-money laundering and terrorism financing Law dated August 28 2009.

2. Do the following persons or bodies have the right to be informed, or is the company obliged to inform the following persons/bodies, about an internal investigation before it is commenced? Do they have the right to participate in the investigation (e.g., in interviews)?

a. Employee representative bodies, such as a works council or union.

No, there is no legal obligation to inform employee representative bodies about an internal investigation related to corruption before it is commenced, unless such an obligation is included in the relevant collective or other agreement concluded between the employer and employee representative body.

b. Data protection officer or data privacy authority.

Data privacy authority does not exist in the structure of state authorities in Kazakhstan. Due to this, there is no legal obligation to inform a data protection officer or a data protection authority about the initiation of an internal investigation related to corruption.

c. Other local authorities.

In case of investigation related to an accident which caused injury or death of an employee which occurred at work, the employer is obliged to immediately inform close relatives of the injured person about the accident and report to the certain state authorities and organizations (for example, local labor inspection, law enforcement body, and some others).

What are the consequences of non-compliance?

If a person determines that a crime of corruption was committed, it must inform the state authorities. If a person does not report it, it runs the risk of being held criminally liable for concealment of the crime.

If a person becomes aware that a crime of corruption was committed and he/she does not inform criminal authorities, he/she may be prosecuted for concealment of a criminal offense. As a result, a person may be sanctioned with imprisonment for a term of up to six years.

3. Do employees have a duty to support the investigation, for instance by participating in interviews? Is there anything a company can do to require employees to support an investigation (e.g., advance consents)? Can companies impose disciplinary measures if an employee refuses to cooperate?

Kazakh legislation does not stipulate an obligation of employees to support the investigation. The company cannot impose disciplinary measures if an employee refuses to cooperate. To be able to hold the employee liable for a failure to cooperate during the investigation, it may be recommended to include such an obligation of employees in the employment agreements concluded with them or to include it in the relevant mandatory internal policies of the company.

If an action or inaction of a person has attributes of a criminal or administrative offense, any person who may be related to such an offense is obliged to support the investigation conducted by the state authorities in order prescribed by the relevant regulations depending on the nature of the offense.

4. Can any labor law deadlines or statute of limitations be triggered, or any rights to sanction employees be waived, by investigative actions? How can this be avoided?

Under the Labor Code of the Republic of Kazakhstan a disciplinary penalty shall be imposed on an employee immediately upon discovery of the offense by representatives of the employer, but not later than one month from the date of its discovery[1]. Disciplinary penalty may not be applied later than six months from the date of committing a disciplinary offense, or no later than one year from the date of committing a disciplinary offense in case a disciplinary offense was discovered in the result of an audit of the employer's financial and economic activities.

The consideration of a disciplinary offense shall not be carried out and the statute of limitations shall be extended for a period of[2]:

1. Temporary disability of an employee.
2. Release of an employee from work for the period of performing state or public duties.
3. The employee's being on vacation or inter-communal vacation.
4. The employee's being on a business trip.
5. Criminal or administrative offense proceedings, as well as before the entry into legal force of a judicial act that may affect imposition of a disciplinary sanction on an employee.
6. Training, retraining, advanced training courses, and internships.
7. The employee's appeal in court against the employer's acts of committing a disciplinary offense.
8. Conducting an investigation of an accident at work in relation to persons who have violated the requirements for safety and labor protection.

However, if there are criminal elements in a disciplinary offense, the deadlines/limitations established by labor law may not be applicable.

1 Article 66 of the Labor Code dated November 23, 2015

2 Ibid.

5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:

a. Conducting interviews?

b. Reviewing emails?

c. Collecting (electronic) documents and/or other information?

d. Analyzing accounting and/or other mere business databases?

No, Kazakh legislation does not provide for regulations stipulating specific obligations for conducting interviews unless such interviews are conducted within criminal or administrative investigation.

Before reviewing emails, collecting (electronic) documents, and/or other information or analyzing accounting and/or other mere business databases an entity or a person shall take into account obligations and restrictions provided for by the Law of the Republic of Kazakhstan No. 94-V of May 21 2013, "On personal data and its protection» and Law of the Republic of Kazakhstan No. 349-I of 15 March 1999 "On state secrets". For instance, under the Law "On personal data and its protection", collection and processing of personal data shall be carried out only upon consent of the person to whom personal data is attributed (exceptions apply). The consent for the collection and processing of personal data is provided in writing, in the form of an electronic document, through the personal data security service, or in any other way using elements of protective actions.

6. Do any specific procedures need to be considered in case a whistle-blower report sets off an internal investigation (e.g., for whistle-blower protection)?

There are no specific procedures that need to be considered in cases where a whistle-blower report sets off an internal investigation. The Criminal Code of the Republic of Kazakhstan provides a mechanism for the protection of persons taking part in criminal proceedings, the respective measures include:

1. Application of security measures by authorized state bodies in order to protect the life and health of protected persons, as well as ensuring the safety of their property.
2. Application of legal protection measures, including criminal liability for infringement of their life, health, and property.
3. Social protection measures that provide for the right to material compensation in the event of their death, bodily injury or other harm to their health, destruction or damage to their property.

A person who reports a corruption offense or otherwise assists in combating corruption is protected by the state and shall be rewarded by the state. For persons who have reported the fact of a corruption offense or otherwise assist in combating corruption shall be entitled to a one-time monetary remuneration. Depending on the amount of the reported bribe, the remuneration may total up to 10% of the bribe but not more than 4,000 MCI (about US$27,000).

7. Before conducting employee interviews in your country, must the interviewee:

a. Receive written instructions?

b. Be informed that he/she must not make statements that would mean any kind of self-incrimination?

c. Be informed that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee (so-called Upjohn warning)?

d. Be informed that they have the right to have their lawyer attend?

e. Be informed that they have the right to have a representative from the works council (or other employee representative body) attend?

f. Be informed that data may be transferred across borders (in particular to the United States of America)?

g. Sign a data privacy waiver?

h. Be informed that the information gathered might be passed on to third parties, including local or foreign authorities?

i. Be informed that written notes will be taken?

Kazakh legislation does not regulate the procedure of conducting employee interviews. In this regard the answer to the most of the above listed questions is "no", unless the procedure of conducting employee interviews is regulated by the company's internal policies, or if the interview is related to the criminal or administrative offense.

As for the personal data issues, the interviewer shall comply with the requirements and restrictions related to transferring personal data of the interviewee abroad. For instance, cross-border transfer of personal data to the territory of foreign states may be carried out only if these states ensure the protection of personal data. Under Data Privacy Law any personal data may be obtained only upon consent of a person to collect and process his/her personal data in writing or in the form of an electronic document.

8. Are document-hold notices or document-retention notices allowed in your country? Are there any specific rules that need to be followed (point in time, form, sender, addressees)?

Document hold notices are neither regulated nor required. However, a criminal court can order the preservation of certain information or documents as a precautionary measure during a criminal trial.

Companies have an option to include these provisions in their internal policies or to include them in employment agreements concluded with employees.

9. Can attorney-client privilege (legal advice privilege) be claimed over findings of the internal investigation? What steps may be taken to ensure privilege is maintained?

According to the Law on the Advocacy, an attorney must not reveal a client's secret. Professional secrecy cannot be disclosed without the client's consent.

This confidentiality is more commonly referred to as professional secrecy or the attorney–client privilege, and is defined as the attorney's obligation to maintain the confidentiality of information disclosed by a client in the context of the attorney–client relationship and the right of the client to consider any advice to him as confidential. The attorney is prohibited from disclosing the information, and the client is entitled to request that the information provided be kept confidential. The attorney must in general refuse to disclose the information when requested to do so by a court, a public authority, or any other third party. It also applies to the correspondence and advice of the attorney to the client; this information is also protected by professional secrecy and benefits from the attorney–client privilege. The attorney is responsible for the consequences of disclosing such secrecy[3]. Moreover, Kazakh legislation prohibits the interrogation of an attorney as a witness re the circumstances that became known to him/her while performing professional duties.

10. Can attorney-client privilege also apply to in-house counsel in your country?

The privilege applies only to advocates and does not apply to lawyers who are not advocates, whether they are inside or outside counsel.

11. Are any early notifications required when starting an investigation?

a. To insurance companies (D&O insurance, etc.) to avoid losing insurance coverage.

b. To business partners (e.g., banks and creditors).

c. To shareholders.

d. To authorities.

There is no legal requirement to provide prior notice of an investigation to insurance companies, business partners, shareholders and any authorities, unless such an obligation is included in the relevant contracts concluded with the relevant insurance companies and/or business partners.

12. Are there certain any immediate measures that have to be taken in your country, or would be expected by the authorities once an investigation starts, e.g., any particular immediate reaction to the alleged conduct?

No, they are no other immediate measures.

3 Article 9 of the Law on the Advocacy and Legal Assistance dated July 5, 2018

13. Is there a duty to self-report the discovered misconduct to prosecuting authorities?

If an internal investigation reveals facts of corruption, the employer, represented by the head executive officer, must immediately report this fact to the anti-corruption agency. Failure to provide information on the facts of corruption entails criminal liability in the form of a restriction of freedom for up to six years.

14. If local prosecuting authorities become aware of an internal investigation, would they interfere in it or ask for specific steps to be followed?

Kazakh legislation is silent with respect to cases where prosecutor authorities become aware of an internal investigation in the commercial company.

15. Please describe the legal prerequisites for search warrants or dawn raids on companies in your country. If the prerequisites are not fulfilled, can the evidence gathered still be used against the company?

Within criminal investigation the procedural actions such as an inspection, visit, excavation, personal search shall be carried out only based on a sanction of the judge (exceptions apply). Such actions are initiated by judicial orders that require due process, and must indicate the scope of the search, premises to be inspected etc.

Search and seizure are performed by a person conducting a pre-trial investigation, based on a reasoned decision. A decision to conduct a search, as well as to seize documents must be authorized by the investigating judge. The search is carried out with the participation of witnesses, and, in necessary cases, with the participation of a specialist and an interpreter.

The excavation is performed with the mandatory use of scientific and technical means of progress, if necessary, a specialist and translator can be involved.

When conducting a search, locked rooms and storage facilities may be forcibly opened if the owner refuses to open them voluntarily.

The person conducting a search is obliged to take measures to ensure that the circumstances of the private life of the person occupying the premises or other persons identified during the search and seizure are not disclosed.

If evidence was obtained in violation of the procedural order prescribed by the legislation, such evidence loses its legal force and may not be accepted by the court.

16. Would voluntary self-disclosure or cooperation with state authorities help avoid or mitigate liability? What are the requirements to obtain the cooperation credit?

Under the Criminal Code of the Republic of Kazakhstan, self-confession of guilt, sincere repentance and active cooperation for disclosure of a criminal offense are considered as circumstances mitigating criminal liability of a person.

When it comes to criminal offenses related to corruption, a company and its employees shall cooperate with the state bodies and Anti-corruption Agency on issues of prevention of corruption. Cooperation with anti-corruption authorities consists in reporting the fact of committing a corruption offense, providing information about the location of a person who committed a corruption offense and other assistance with detection, suppression, disclosure and investigation of a corruption offense.

17. Are deals, non-prosecution agreements, or deferred prosecution agreements available and common for corporations in your jurisdiction?

In case of a criminal offense, including corruption crimes, there is a practice of concluding a procedural agreement in Kazakhstan[4]:

1. In the form of a plea deal, or
2. In the form of a cooperation agreement.

Abovementioned options are not available under administrative law.

4 Article 612 of the Criminal Procedure Code dated July 4, 2014

18. What types of penalties (e.g., fines, imprisonment, disgorgement, or debarment) could companies, directors, officers, or employees face for misconduct of (other) individuals of the company?

As a general rule, commercial companies, their directors and officers shall not be liable for the misconduct of employees of the companies. However, Kazakh legislation stipulates cases when a company or its director may be held liable for the actions of the company's employees. For instance, according to the Civil Code, a company shall compensate damage caused to third parties by the company's employee during performance of his/her labor duties. Also, under the Criminal Code, if an employee commits a crime by the order of the company's director, the director may be held liable together with the employee as an accomplice.

Criminal penalties may include fines, community service, public work, confiscation of property, restrictions on liberty, imprisonment, and others. Administrative sanctions can be in the form of monetary fines, confiscation of property, restriction of freedom, and others. As mentioned previously, criminal liability does not apply to companies.

19. Can penalties for companies, their directors, officers, or employees be reduced or suspended if the company can demonstrate an efficient compliance system? Does this only apply in cases where efficient compliance systems have been implemented prior to the alleged misconduct?

Due to the fact that this aspect is not explicitly regulated by Kazakh laws, currently no legislative act provides for such possibility.

20. Please briefly describe any investigation trends in your country (e.g., recent case law, upcoming legislative changes, or special public attention on certain topics).

The Supreme Court of the Republic of Kazakhstan in its recent Normative resolution on practice of considering certain corruption crimes emphasized that it is important to distinguish mediation in bribery from giving and receiving a bribe, taking into account that the intermediary is a person who helps the bribe-taker and the bribe-giver in reaching or implementing an agreement between them on receiving and giving a bribe. At the same time, to be found guilty of mediation in bribery, it does not matter whether the intermediary received remuneration from the bribe-giver or the bribe-taker.

The actions of the intermediary should be considered a completed crime from the moment of facilitating an agreement between the bribe-giver and the bribe-taker on giving and receiving a bribe or implementing such an agreement, i.e., from the moment the bribe-taker accepts at least part of the stipulated amount of the bribe.

A person who organized, instigated, or otherwise facilitated the giving or receiving of a bribe, and at the same time performed intermediary functions, is liable for complicity in giving or receiving a bribe. The question on qualification of actions of the accomplice should be decided taking into account the focus of its intent, assuming, for whose benefit, on whose side and under whose initiative he/she acted (i.e., the bribe-giver or the bribe-taker).

If the person receives from the bribe-giver money or other values ostensibly to transfer to the other person as a bribe and in fact not intending to do it and takes it to itself, such actions should be qualified as fraud. When in order to receive the funds a person induces the bribe-giver to commit the bribe, such actions must additionally be qualified as instigation to bribery, and the actions of the bribe-giver in such cases are subject to qualification as an attempt at bribery. It does not matter whether the specific person to whom the bribe was intended was indicated.

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Valeriy helps clients in their daily activities by advising on various corporate issues, on compliance with the requirements and provisions of the law, on support of contractual relations, development and examination of various types of contracts, on obtaining licenses and permits, on liquidation of companies, on various aspects of compliance data protection, dispute resolution, and also has experience in advising on certain issues of international arbitration.

Kyrgyz Republic

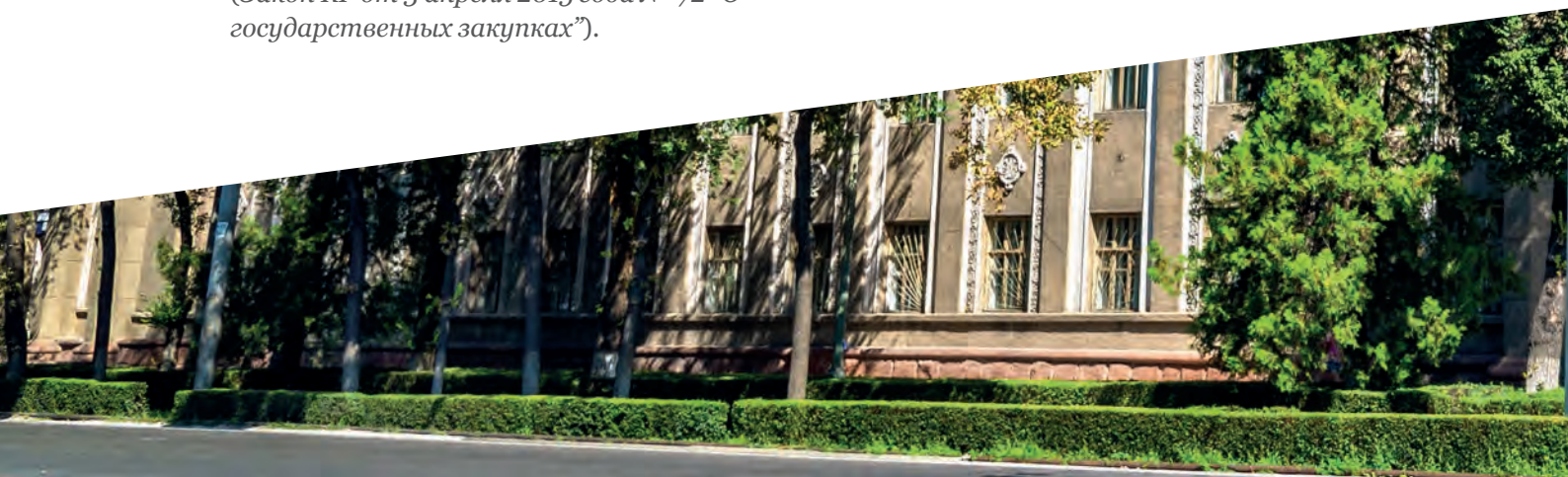
Contributed by Kalikova & Associates

	Corporate liability	Public bribery	Commercial bribery	Extraterritorial applicability of criminal laws	Adequate procedures defense
Yes		✓	✓	✓ Applies to citizens of the Kyrgyz Republic and stateless persons permanently residing in the Kyrgyz Republic unless they have already been held liable in another jurisdiction	
No	✗ Companies cannot be held criminally liable, but can be subject to enforcement measures of criminal law: fine, restriction of rights, and liquidation of a company				✗

1. What are the laws relating to anti-corruption, bribery, and money laundering in your country?

In the Kyrgyz Republic, the key pieces of legislation which refer to anti-corruption, bribery, and money laundering are as follows:

- Law on Anti-Corruption (Law No. 153) (*Закон КР от 8 августа 2012 года № 153 "О противодействии коррупции"*).
- Law on State Civil Service and Municipal Service (Law No. 75) (*Закон КР от 30 мая 2016 года № 75 "О государственной гражданской службе и муниципальной службе"*).
- Law on Public Procurement (Law No. 72) (*Закон КР от 3 апреля 2015 года № 72 "О государственных закупках"*).
- Law on Combating Terrorism Financing and Legalization (Laundering) of Proceeds of Crime (Law No. 87) (*Закон КР от 6 августа 2018 года № 87 "О противодействии финансированию террористической деятельности и легализации (отмыванию) преступных доходов"*).
- Law on Protection of Persons Reporting Corruption Offenses (Law No. 19) (*Закон КР от 28 января 2019 года № 19 "О защите лиц, сообщивших о коррупционных правонарушениях"*).
- Kyrgyz Criminal Code (*Уголовный кодекс КР от 2 февраля 2017 года № 19*).
- Kyrgyz Civil Code (*Гражданский кодекс КР от 8 мая 1996 года № 15*).



2. Do the following persons or bodies have the right to be informed, or is the company obliged to inform the following persons/bodies, about an internal investigation before it is commenced? Do they have the right to participate in the investigation (e.g., in interviews)?

a. Employee representative bodies, such as a works council or union.

The company is not obliged to inform employee representative bodies about an internal investigation before and/or after commencing an internal investigation unless required under the employment agreement or internal documents of the company.

b. Data protection officer or data privacy authority.

There is no such requirement. Although there are plans to establish a data privacy authority in the future, there is currently no such authority. There is also no requirement to appoint a data protection officer.

c. Other local authorities.

It is not mandatory for the company to inform local authorities about an internal investigation before and/or after commencing an internal investigation, except for cases where there has been a workplace accident. The employer is obliged to immediately report group, serious, and fatal industrial accidents by telephone (fax) or other means of communication to:

i. the authorized state body in the field of supervision and control over the observance of the labor legislation of the Kyrgyz Republic (labor inspection);
ii. the prosecutor's office at the place where the accident occurred;
iii. territorial body of state supervision, if an accident occurred in an organization (at a facility) controlled by this body;
iv. a superior body for the organization; territorial association of trade unions; and
v. the organization that sent the employee with whom the accident occurred.

What are the consequences of non-compliance?

Since it is not mandatory, there are no consequences if a company fails to inform the aforementioned bodies of internal investigations.

3. Do employees have a duty to support the investigation, for instance by participating in interviews? Is there anything a company can do to require employees to support an investigation (e.g., advance consents)? Can companies impose disciplinary measures if an employee refuses to cooperate?

Generally, employees do not have a duty to cooperate with an investigation, unless such a duty is explicitly provided for in the employment contract and/or internal employee handbooks and rules, which employees have signed and agreed to be bound by. In any case, the company may not impose disciplinary measures if the employee refuses to cooperate, unless a duty to cooperate is explicitly indicated as the employee's work responsibility. Under the Kyrgyz Labor Code, disciplinary measures can only be imposed on employees if they have failed to properly complete their workplace responsibilities or violated disciplinary rules.

If a duty to cooperate is provided for in the employment contract and/or internal employee handbook and rules, or the employee agrees to cooperate in a voluntary manner, it is recommended that a written explanation of the employee's version of events should be obtained. Written consent should also be obtained in advance, documenting the employee's willingness to be interviewed and for the investigation/interview to be recorded.

4. Can any labor law deadlines or statute of limitations be triggered, or any rights to sanction employees be waived, by investigative actions? How can this be avoided?

Under the Kyrgyz Labor Code, disciplinary action must be taken immediately and no later than one month after the discovery of the misconduct, not counting employee sick leave or annual leave. However, disciplinary action cannot be taken:

a. later than six months from the day the misconduct was committed; or

b. two years from the day the misconduct was committed if it was discovered as a result of an audit or state or internal inspection of financial and economic activity of the company. This deadline/statute of limitations does not include the time of the criminal proceedings.

5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:

a. Conducting interviews?

Processing of personal data received during the interview will require the data subject's consent as described in more detail below.

b. Reviewing emails?

The Law on Electronic and Postal Communication (Law No. 31) (Закон КР от 2 апреля 1998 года № 31 "Об электрической и почтовой связи") shall be taken into account before reviewing emails. The opening and inspection of mail correspondence and documentary messages, to obtain information on an individual is prohibited, except for cases provided for by the legislation of the Kyrgyz Republic (for example, law enforcement bodies are permitted access to emails). Under the Kyrgyz Constitution everyone has the right to privacy of correspondence and communication, including by telephone, post, electronic, and other types of messages. The restriction of these rights is allowed only in accordance with the law and solely on the basis of a court ruling.

c. Collecting (electronic) documents and/or other information?

The personal data protection issues in the Kyrgyz Republic are regulated by the Constitution, the Personal Data Law (Law No. 58) (Закон КР от 14 апреля 2008 года № 58 "Об информации персонального характера") and subordinate legislation establishing the procedures for implementing the primary legislation. The Personal Data Law establishes the definition of personal data, the rights and freedoms of personal data subjects and procedures for the protection of these rights and freedoms. The Personal Data Law also establishes the definition of personal data processing (i.e., any operation or series of operations carried out irrespective of means, automatically or not, for the purpose of collection, recording, storing, updating, grouping, blocking, deleting, and destroying the personal data) and sets out the requirements, duties, and liabilities of personal data holders (controller) while processing personal data.

The general rule established by the Personal Data Law for personal data processing is the consent of the personal data subject. The subject's consent to the processing of their personal data must be free, specific, unconditional, and conscious. The consent must be given in writing in either paper form or in electronic form signed in accordance with the legislation of the Kyrgyz Republic by electronic signature.

d. Analyzing accounting and/or other mere business databases?

No unless they contain personal data, in which case the Personal Data Law will apply.

6. Do any specific procedures need to be considered in case a whistle-blower report sets off an internal investigation (e.g., for whistle-blower protection)?

There are no specific procedures that need to be considered where a whistle-blower report sets off an internal investigation. In the Kyrgyz Republic there are no whistle-blower protection laws or any other legislation which requires the setting up of anonymous communication channels. However, the Law on Protection of Persons Reporting Corruption Offenses provides protection from prosecution by the state for persons who report corruption offenses.

7. Before conducting employee interviews in your country, must the interviewee:

a. Receive written instructions?

Not required by law.

b. Be informed that he/she must not make statements that would mean any kind of self-incrimination?

Not required by law.

c. Be informed that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee (so-called Upjohn warning)?

Not required by law.

d. Be informed that they have the right to have their lawyer attend?

Not required by law.

e. Be informed that they have the right to have a representative from the works council (or other employee representative body) attend?

Not required by law.

f. Be informed that data may be transferred across borders (in particular to the United States of America)?

Yes. Under the Personal Data Law, the interviewee must be informed about the cross-border transfer of personal data and his/her consent for such transfer must be obtained.

g. Sign a data privacy waiver?

Yes. Under the Personal Data Law, written consent of the interviewee for processing and use of personal data must be obtained.

h. Be informed that the information gathered might be passed on to third parties, including local or foreign authorities?

Yes. Under the Personal Data Law, the interviewee must be informed about the transfer of personal data to third parties and his/her consent for such transfer must be obtained.

i. Be informed that written notes will be taken?

Not required by law.

8. Are document-hold notices or document-retention notices allowed in your country? Are there any specific rules that need to be followed (point in time, form, sender, addressees)?

There are no special rules governing such notices in the Kyrgyz Republic. If needed, companies may use them in the form of internal orders to make them mandatory for the company's employees. It is recommended that a written acknowledgement from each of the company's employees be obtained recording that they have read the notice, understand its content and will comply with it.

9. Can attorney-client privilege (legal advice privilege) be claimed over findings of the internal investigation? What steps may be taken to ensure privilege is maintained?

Attorney-client privilege is not applicable to general legal practitioners and applies to only licensed attorneys. The latter are bound by so-called "advocate secrecy", which means that any information related to the provision of legal assistance by a licensed attorney to a client cannot be used in the attorney's own interest or in the interests of third parties.

In order to ensure privilege protection, an agreement between the licensed attorney and the client should be entered into.

10. Can attorney-client privilege also apply to in-house counsel in your country?

There are no precedents on this matter nor is it specifically regulated under Kyrgyz laws. Theoretically, an in-house counsel might be a licensed attorney who is bound by advocate secrecy. However, attorney-client privilege applies to licensed attorneys who carry out attorney activities either individually (by having an attorney's office) or through attorneys' firm (in the form of a collegium of advocates or bureau of advocates).

11. Are any early notifications required when starting an investigation?

a. To insurance companies (D&O insurance, etc.) to avoid losing insurance coverage.

This should be analyzed on a case-by-case basis. Generally, once the insured party finds out about the occurrence of an investigation, he/she shall promptly notify the insurer or his/her representative of its occurrence.

b. To business partners (e.g., banks and creditors).

Not explicitly required by law, unless such notification requirement is stipulated in the contracts with the business partners.

c. To shareholders.

Not explicitly required by law, unless such notification requirement is stipulated in the company's internal documents (Charter, Shareholders' Agreement, etc.).

d. To authorities.

No.

12. Are there any other immediate measures that have to be taken in your country, or would be expected by the authorities once an investigation starts, e.g., any particular immediate reaction to the alleged conduct?

This should be analyzed on a case-by-case basis. Currently, there are no legal requirements related to performance of internal investigations.

13. Is there a duty to self-report the discovered misconduct to prosecuting authorities?

No. Pursuant to Part 5 of Article 26 of the Kyrgyz Constitution, no one shall be obliged to testify against themselves, spouse or close relatives as determined by law. However, Article 73 of the Criminal Code recognizes sincere repentance and active contribution to the detection of criminal violations as one of the consequences mitigating punishment.

14. If local prosecuting authorities become aware of an internal investigation, would they interfere in it or ask for specific steps to be followed?

If local prosecuting authorities become aware of an internal investigation, they would not interfere in it however, they may initiate their own investigation.

15. Please describe the legal prerequisites for search warrants or dawn raids on companies in your country. If the prerequisites are not fulfilled, can the evidence gathered still be used against the company?

In the Kyrgyz Republic, the grounds and procedure for performing a search and seizure shall be regulated by the Kyrgyz Criminal Procedure Code. A search may be performed if sufficient data exists to show that the relevant person may be keeping instruments of crime, objects, documents and valuables which may be important to the criminal case and/or the case of misconduct, at the location of the search.

If it is necessary to seize certain objects and documents of importance to the case the seizure may be performed if, (a) the exact location of the property is known (b) the person holding such property can be identified and (c) there are grounds for the confiscation of such property.

The search and seizure shall be performed on the grounds of the investigating judge's decision. In exceptional cases, when there is a real fear that delay may result in the objects to be seized to be lost, damaged or used for criminal purposes, or the wanted person to escape, the search and

seizure may be carried out without the sanction of the investigating judge. However, a notice that a search was carried out must be forwarded to the investigating judge within 24 hours. Once the investigating judge receives the notice, protocol and other materials obtained as a result of the search and seizure, the investigating judge will verify the legality of the search/seizure and issues a decision on its legality of illegality. If the judge determines that the search/seizure was illegally performed, any proof obtained may not be admitted as evidence in the case.

16. Would voluntary self-disclosure or cooperation with state authorities help avoid or mitigate liability? What are the requirements to obtain the cooperation credit?

Yes, voluntary cooperation with the state authorities would help avoid or mitigate liability for certain crimes, including corruption and terrorist financing. A suspect, who wishes to cooperate with the state authorities, should indicate what actions they will undertake in order to facilitate pre-trial proceedings in the disclosure and investigation of the crime, the exposure and criminal prosecution of other accomplices of the crime and the search for property obtained as a result of the crime. A cooperation agreement cannot be concluded with minors and persons who committed a crime in a state of insanity or who became mentally disabled after committing a crime.

17. Are deals, non-prosecution agreements, or deferred prosecution agreements available and common for corporations in your jurisdiction?

Under Kyrgyz law, only individuals are subject to criminal liability. Legal entities are not subject to criminal liability or punishment. Accordingly, deals, non-prosecution agreements, and deferred prosecution agreements are not available and common for corporations in the Kyrgyz Republic.

18. What types of penalties (e.g., fines, imprisonment, disgorgement, or debarment) could companies, directors, officers, or employees face for misconduct of (other) individuals of the company?

According to Article 997 of the Kyrgyz Civil Code, a legal entity or an individual shall indemnify the harm inflicted by his employee while exercising his labor (working, official) duties. However, if the employee committed the misconduct not while exercising his labor duties, in such case the employer shall not be liable.

Sanctions under criminal law include public work; deprivation of the right to hold certain positions or engage in certain activities; correctional labor; fine; maintenance in a disciplinary military unit; imprisonment for a specified period; life imprisonment. In addition, assets received as a result of certain criminal offenses are subject to confiscation.

Only individuals can be held criminally liable. There is no criminal liability for legal entities. However, legal entities can be subject to enforcement measures of criminal law such as fines, restriction of rights and the liquidation of the company. If a criminal offense is committed in the interests of or on behalf of a legal entity, the directors may be held criminally liable while the company may be held liable for an administrative offense.

Administrative sanctions for companies are warnings and fines.

19. Can penalties for companies, their directors, officers, or employees be reduced or suspended if the company can demonstrate an efficient compliance system? Does this only apply in cases where efficient compliance systems have been implemented prior to the alleged misconduct?

No. The Kyrgyz law does not provide for reduction or suspension of penalties where the company implemented an efficient compliance system.

20. Please briefly describe any investigation trends in your country (e.g., recent case law, upcoming legislative changes, or special public attention on certain topics).

New Criminal Code, Code on Misdemeanors, Code on Misconducts, Criminal Procedure Code, and Penitentiary Code were adopted and entered into force starting January 1, 2019. In general, the new codes are directed at humanization and decriminalization of crimes, i.e., criminal penalties for some acts have been lessened or eliminated.

With regard to the anti-corruption cases, according to the General Prosecutor's Office's data provided to the information agency "24.kg", in 2018-2019, Kyrgyz law enforcement agencies initiated and investigated 4,870 criminal cases on corruption and malfeasance. As a result, 1,135 people were held accountable. The number of corruption and malfeasance-related cases has grown compared to the previous years. For example, in 2016-2017, Kyrgyz law enforcement agencies initiated 2,039 cases. The damage to the state from corruption and malfeasance in two years amounted to 12.2 billion Kyrgyz soms (approximately US$159 million).

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Moldova

Contributed by Popa & Associates

	Corporate liability	Public bribery	Commercial bribery	Extraterritorial applicability of criminal laws	Adequate procedures defense
Yes	✓	✓	✓	✓	
No					✗ No formal defense, but could be viewed as mitigating circumstances

1. What are the laws relating to anti-corruption, bribery, and money laundering in your country?

In Moldova, the following laws and regulations apply:

- Criminal Code (*Codul penal*) which criminalizes different types of corruption and money laundering.
- Law on prevention and fight against money laundering and terrorism financing (Law No. 308 *Legea cu privire la prevenirea și combaterea spălării banilor și finanțării terorismului* – from now on "**Law 308**").
- Law on whistle-blowing (Law No. 122 *Legea privind avertizorii de integritate*).

2. Do the following persons or bodies have the right to be informed, or is the company obliged to inform the following persons/bodies, about an internal investigation before it is commenced? Do they have the right to participate in the investigation (e.g., in interviews)?

a. Employee representative bodies, such as a works council or union.

There is no legal obligation to inform labor unions or other worker representative bodies in respect of internal investigations.

b. Data protection officer or data privacy authority.

There is no legal obligation to inform the data protection officer or data privacy authority of internal investigations. However, a data protection officer may be invited to participate in the investigation.

c. Other local authorities.

In case of reporting entities (e.g., banks, real estate agents, audit entities, lawyers, and others), if any suspicions of money-laundering or related offenses arise, the reporting entities are obliged to inform the Office for Prevention and Fight against Money Laundering (*Serviciul Prevenirea și Combaterea Spălării Banilor*).

What are the consequences of non-compliance?

In case of breaches of provisions under the Law 308 the reporting entity may be subject to disciplinary, pecuniary, and administrative sanctions as well as be criminally liable.

3. Do employees have a duty to support the investigation, for instance by participating in interviews? Is there anything a company can do to require employees to support an investigation (e.g., advance consents)? Can companies impose disciplinary measures if an employee refuses to cooperate?

Generally employees are expected to cooperate, however, there is no legal obligation to do so. Further, employees enjoy a range of protections regarding their liberties and legal interests.

4. Can any labor law deadlines or statute of limitation be triggered, or any rights to sanction employees be waived, by investigative actions? How can this be avoided?

In pursuance of the Moldovan Labor Code (*Codul muncii*), disciplinary sanctions are *normally* applied immediately after and not later than one month from the date of finding of the breach of the relevant labor law. The one-month period does not take into account employees' absence due to annual, study, or sick leave.

The disciplinary sanction cannot be applied after the expiration of six months from the day of committing the disciplinary offense.

Following the review or state or internal audit of the financial activity, the relevant disciplinary sanction cannot be applied after the expiration of two years from the date of the audit or review. Please note, the duration of the criminal procedure is not included in the above-mentioned periods.

5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:

a. Conducting interviews?

It is advisable to request a written statement from the relevant employee. The refusal on the part of the employee to present the written statement shall be reported by a representative of both the employer and employees. Legitimate interest of the employer can be used as a legal ground for the processing of the employee's personal data.

b. Reviewing emails?

Since reviewing someone else's email is a serious interference with his/her private life, as well as a criminal offense, (i.e., a violation of the right to privacy of correspondence), it is difficult to conduct a review of an email without the relevant person's consent or authorization of a judge (in the case of a criminal procedure). Moreover, in light of European Court of Human Rights case law (case Barbulescu v. Romania) also corporate emails are protected (Moldovan Constitution (*Constituția Republicii Moldova*), Moldovan Labor Code, Moldovan Criminal Code, Data Protection Law (Law No. 133 *Legea privind protecția datelor cu caracter personal*). Therefore, outside of a criminal investigation, it appears to be difficult to conduct an email review. However, having evaluated the legitimate interests of each of the relevant parties, the email review is permitted only if the employee agrees to grant access to his/her corporate email correspondence and a set of rules stating the scope, purpose, and specific limits regarding the access has been established.

c. Collecting (electronic) documents and/or other information?

The same commentary stated in section b applies.

d. Analyzing accounting and/or other mere business databases?

No, provided that the databases include only company business information. On the other hand, if accounting or business databases include personal data, the data subject must be informed prior to the relevant review. Moreover, if the processing of the data is conducted by a third party, it must be compliant with the requirements of the Data Protection Law (Law No. 133).

6. Do any specific procedures need to be considered in case a whistle-blower report sets off an internal investigation (e.g., for whistle-blower protection)?

Pursuant to Law on Whistle-blowing (Law No. 122), an employee is able to disclose illegal practices (e.g., manifestation of corruption), violations of human rights and freedoms concerning national security and specific dangers to public safety. The whistle-blower should act in good faith and is allowed to pass information either internally (i.e., communication with the employer) or externally (i.e., communication with the National Anticorruption Center (Centrul Național Anticorupție)).

The identity of the whistle-blower ought/must not be disclosed to the suspect of the misconduct, if the whistle-blower does not wish to reveal his/her identity.

The complaint should be reported in a special register kept by the employer or the National Anticorruption Center. Following the recording of the complaint, the disclosing employee receives a status of whistle-blower.

If the illegal practices disclosed by the whistle-blower have, to various extent, elements of an offense or misdemeanor, the employer is obliged to inform the relevant investigative authorities. Please note that non-disclosure agreements or professional secrets do not prevent the disclosure of illegal practices.

For the complaint to be valid, the disclosure ought to meet the following requirements:

i. it should be made by an employee of a private or public entity;
ii. it should refer to the activity of the employer;
iii. it should contain information/evidence about illegal practices and actual, imminent or potential danger to public interest; and
iv. the identity of the whistle-blower should be disclosed (i.e., name, surname, and contact details).

Within a term of 30 days (which could be extended) after the recording of the complaint, the employer or National Anticorruption Center should inform the whistle-blower about the result of the assessment of the complaint. In the event that a criminal investigation is commenced as a result of the information disclosed, the whistle-blower is to be informed.

7. Before conducting employee interviews in your country, must the interviewee:

a. Receive written instructions?

In accordance with Article 9 (1) let. f1) of Moldovan Labor Code, the employee has the right to be informed, among other things, about any matters that concern the activity of the company. Thus, the employer is to provide the employee with instructions regarding the interview, not necessarily in written form. Further, should the interview relate to specific information or events that occurred in the past, it is in the employer's interest to inform adequately the interviewee, so as to receive appropriate answers to the relevant questions.

b. Be informed that he/she must not make statements that would mean any kind of self-incrimination?

Pursuant to Article 9 (1) let. l) of Moldovan Labor Code, the employee enjoys the right to defend his/her labor rights, legitimate interest and freedoms. Additionally, albeit no such rules as in the criminal procedure are applicable, if the employer has reasonable doubts that the employee has committed a criminal offense, it is advisable for the employer to inform the employee about

i. the employer's doubts;
ii. the employee's statement will be sent to the relevant authorities and
iii. the potential risks of facing prosecution.

c. Be informed that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee (so-called Upjohn warning)?

There is no such obligation under Moldovan law. However, for the sake of clarity, the company's lawyer attending the interview could inform the employee of this.

d. Be informed that they have the right to have their lawyer attend?

Although, there is no such obligation under Moldovan law, if the matter in question is serious and involves high risk of litigation/prosecution, it is advisable to inform the employee about the right for his/her lawyer to attend which is considered as part of the employee's right of defense.

e. Be informed that they have the right to have a representative from the works council (or other employee representative body) attend?

It is not mandatory to make the employee aware of the above right.

f. Be informed that data may be transferred across borders (in particular to the United States of America)?

The data controller (i.e., the company) shall inform the employee about the means of processing and transfer of his/her personal data in order to ensure transparency. Moreover, a special authorization is needed from the National Center for Personal Data Protection (Centrul Național pentru Protecția Datelor cu Caracter personal) to transfer the data to third countries.

g. Sign a data privacy waiver?

A potential employee's consent for a privacy waiver will not be valid under the Data Protection Law (Law No. 133) due to the inherent risk of imbalance in the employee-employer relationship which may make the consent questionable

h. Be informed that the information gathered might be passed on to third parties, including local or foreign authorities?

The employee should be informed of this possibility to ensure the protection of his/her personal data.

i. Be informed that written notes will be taken?

It is recommended, albeit not mandatory, for the employer to inform the employee that written records will be taken during the interview (e.g., file note).

8. Are document-hold notices or document-retention notices allowed in your country? Are there any specific rules that need to be followed (point in time, form, sender, addresses)?

Document-retention notices or document-hold notices are not regulated under Moldovan law. As such, employers are allowed to set out the terms of these procedures together with the employees in an employment agreement.

However, it is important to notice that pursuant to Article 360 of the Moldovan Criminal Code, taking, misappropriating, concealing, damaging or destroying documents belonging to enterprises is established as a crime, if such act was committed for purposes of profit or for other malicious reasons.

9. Can attorney-client privilege (legal advice privilege) be claimed over findings of the internal investigation? What steps may be taken to ensure privilege is maintained?

Pursuant to Article 58 of the Statute of the Attorney (*Statutul profesiei de avocat*), the attorney must maintain any privileged aspect of the case under confidentiality.

The attorney must not under any circumstances and to any person disclose the privileged material and thus breaching the professional secret. The attorney cannot be exempted from professional secrecy by either his/her client or another authority or person, with the only exception being when the attorney is prosecuted or in case of dispute regarding the attorney's fees for the defense.

The professional secret covers all information and data of any kind, in any form, as well as any documents drafted by the attorney, which contain information or data provided by the client or are based on such information for the purpose of providing legal assistance and whose confidentiality has been requested by the client.

10. Can attorney-client privilege also apply to in-house counsel in your country?

Under the Law on Advocacy (No. 1260 *Legea cu privire la avocatură*), the licensed lawyer's (i.e., attorney at law) duty of maintaining legal privilege is not limited in time and is part of the oath that attorneys take, when he/she is admitted to the Bar.

On the other hand, the in-house counsel being an employee, may have, at most, a non-disclosure obligation drafted in accordance with Article 53 of the Moldovan Labor Code, which is very different to various respects and provides for fewer guarantees than an attorney-client privilege.

11. Are any early notifications required when starting an investigation?

a. To insurance companies (D&O insurance, etc.) to avoid losing insurance coverage.

According to Article 1851 of the Moldovan Civil Code (*Codul Civil*), the occurrence of the insured event shall be notified immediately to the insurer by the contractor, insured party, or, as the case may be, the beneficiary, provided that the person obliged to make the notification, knew or ought to have known of the existence of the insurance cover and the occurrence of the insured event. If the insurance agreement requires that the information should be made within a certain period, such period must be reasonable. Therefore, if the insured party becomes aware of the insured event, it is required, according to the insurance policy, to notify the insurer, in order to avoid any potential litigation.

b. To business partners (e.g., banks and creditors).

No, unless otherwise provided in the business agreements or the business partners' legitimate interests are affected.

c. To shareholders.

No, notifications are not required. However, upon shareholders' request, the director of the company must provide him/her with information on the company's activity.

d. To authorities.

This will be decided on a case-by-case basis, depending on various factors including the scope of the investigation and the alleged violations of the regulatory requirements.

12. Are there any other immediate measures that have to be taken in your country, or would be expected by the authorities once an investigation starts, e.g., any particular immediate reaction to the alleged conduct?

Normally, the immediate action that ought to be taken by the representatives of the company is to cease the alleged conduct and preserve the evidence. Further, and in case of money laundering, the relevant representative must inform the Office for Prevention and Fight against Money Laundering immediately.

If employees are involved in the wrongdoing and there is enough evidence to prove so, the employer can apply a disciplinary sanction.

Should the wrongdoing occur on the part of the directors or other decision makers, they may be suspended during the course of the investigation.

13. Is there a duty to self-report the discovered misconduct to prosecuting authorities?

Generally, under Moldovan law there is no such obligation to self-report a discovered misconduct to the prosecutor office. However, in the case of money laundering and financing of terrorism, the reporting entities are obliged to inform the Office for Prevention and Fight against Money Laundering about suspected goods, activities or transactions likely to be related to money laundering, associated offenses and to terrorism financing, if such activities are in the course of being or sought to be performed, about to occur or if they have already been performed.

14. If local prosecuting authorities become aware of an internal investigation, would they interfere in it or ask for specific steps to be followed?

On a case-by-case basis, the prosecutor is likely to initiate an investigation with the same objective of the internal investigation. The prosecutor may request evidence (e.g., relevant documents) collected by the internal investigative body as well as interview witnesses.

15. Please describe the legal prerequisites for search warrants or dawn raids on companies in your country. If the prerequisites are not fulfilled, can the evidence gathered still be used against the company?

The prosecution has the right to conduct a search at specific premises, so long as it is reasonable to do so and if the relevant evidence cannot be obtained by any other means.

The search and seizure of documents (or other goods) shall be performed in the presence of the representative of the company.

A search shall be considered valid, only if it is based on an order of the prosecution with the authorization of the investigative judge (judecător de instrucție). However, in specific serious cases (i.e., in flagrante delicto), a search may be based on a reasoned order without the authorization of the investigative judge, yet the judge shall verify the lawfulness of the search within 24 hours from the completion of the search.

According to Moldovan Criminal Procedure Code (Codul de procedură penală), the evidence gathered with essential violation of the provisions of the Code shall not be accepted as evidence (in a criminal proceeding) and shall be excluded from the case file. However, in practice, it does not appear to be common for the judge to consider the evidence invalid, and even less common to remove invalid evidence from the case file.

16. Would voluntary self-disclosure or cooperation with state authorities help avoid or mitigate liability? What are the requirements to obtain the cooperation credit?

As a general rule, in a criminal procedure, the voluntary self-disclosure and/or cooperation with the state authorities, in particular, with the prosecution office, is a mitigating factor. For instance, in some cases of bribery (Corupere activă) or influence peddling (Trafic de influență), the voluntary self-disclosure may help avoid criminal liability.

In order to benefit from such provisions of the Moldovan Criminal Code (i.e., Article 325 (4) and Article 326 (4)), the following requirements ought to be met:

i. the goods/services should be extorted from the disclosing party; or
ii. the voluntary self-disclosure should be conducted by the relevant person without knowing that criminal investigative bodies are aware of the crime committed. Please note that only the person who promises, offers, or provides the goods/services, is able to benefit from such provisions.

In other instances, in order to obtain the cooperation credit, the self-disclosing party ought to inform the competent state authority as soon as possible, issue and offer full support for the investigation.

17. Are deals, non-prosecution agreements, or deferred prosecution agreements available and common for corporations in your jurisdiction?

Normally, deals with the prosecution are not common in Moldova, except for plea bargains. Moreover, in the Moldovan legal framework, these deals can be risky, because, when the defendant is willing to reach a deal with the prosecution, the company gives up many rights and guarantees provided by the law. Furthermore, the deal should be accepted by a judge and under the law he/she is not bound by the agreement of the parties (i.e., the defendant and prosecution).

Even though the plea bargain agreement is reached, the defendant must confess the actions mentioned in the accusation, and, upon approval of the judge, the defendant could, at most, benefit from a reduction by one fourth of the punishment set by the law, in case such punishment is a fine.

18. What types of penalties (e.g., fines, imprisonment, disgorgement, or debarment) could companies, directors, offices, or employees face for misconduct of (other) individuals of the company?

According to Article 63 of the Moldovan Criminal Code only the following penalties could be applied to a legal entity:

i. fine;
ii. deprivation of the right to exercise a specific activity;
iii. liquidation.

In addition, under the law on public procurement, the contracting authority has an obligation to exclude any tenderer if it has been convicted by the final decision of a court for corruption.

Criminal liability of the legal entity does not exclude the liability of individuals (i.e., director, or officer) for the committed offense.

With regards to the directors, officers, or employees, they could also be held liable alongside the legal entity, if at least one of the following circumstances is acknowledged:

i. the wrongdoing was committed in the interest of the legal entity by a person empowered with management functions, who acted independently or as a part of a body of the legal entity;
ii. the wrongdoing was admitted/authorized or approved/used by the person empowered with management functions; and
iii. the wrongdoing was committed due to lack of supervision and control by the person empowered with management functions.

A person is considered empowered with management functions, if it has at least one of the following functions:

i. representing the legal entity;
ii. making decisions on behalf of the legal entity; and
iii. exercising the control within the legal entity.

If the court finds an individual liable the following penalties may apply:

i. fine;
ii. deprivation of the right to hold certain positions or exercise a specific activity;
iii. annulment of military rank, special titles, qualification (classification) degrees, and state distinctions;
iv. community service;
v. imprisonment; and/or
vi. life imprisonment.

19. Can penalties for companies, directors, officers, or employees be reduced or suspended if the company can demonstrate an efficient compliance system? Does this only apply in cases where efficient compliance systems have been implemented prior to the alleged misconduct?

Even though the Moldovan Criminal Code does not expressly recognize the implementation of an efficient compliance system as a mitigating factor, this may lead to a reduction of the penalty, under Article 76 (2) of the Moldovan Criminal Code.

In any case, the mitigating value of a compliance system could be held by the court, only if it has been implemented prior to the alleged misconduct.

20. Please briefly describe any investigation trends in your country (e.g., recent case law, upcoming legislative changes, or special public attention on certain topics).

The most important investigation in Moldova occurred in 2014 involving three Moldovan banks: Banca de Economii, Banca Social, Unibank, the so-called "US$1 Billion Bank Fraud" (equivalent today to nearly one tenth of Moldova's economy). The investigation was conducted by Kroll and Steptoe & Johnson engaged by the National Bank of Moldova.

The investigation started at the beginning of 2015 and has resulted in a number of reports regarding the scope of the investigation and the recovery of assets strategy. The representatives of the investigative companies have shared the reports with law enforcement authorities of Moldova and even had meetings with their representatives,

in order to support the effort for recovery of the fraudulent funds at international level and to strengthen the evidence in the procedures initiated at national level. However, no assets have been recovered so far.

Furthermore, even though the reports were confidential, they have been leaked and a lot of information about the investigation, and the alleged beneficiaries of the fraud, has been made publicly available.

Additionally, taking into consideration the impact of the fraud on the country as a whole, former representatives of the investigative bodies of Moldova (criticized by the public for their lack of independence and of their willingness to investigate the fraud) have disregarded the reports made by the above-mentioned investigative companies and have expressed their reluctance to such private investigations.

From our perspective the investigation mentioned above could have had great influence on the process of recovery of financial assets stolen from the Moldovan banking system. Unfortunately, the National Bank of Moldova and the Prosecutor Office still have deficiencies and may be reluctant to accept and use the outcome of this investigation.

Nevertheless, we hope that in the future the US$1 Billion Bank Fraud investigation will help make further investigations in relation to other companies more expeditious.

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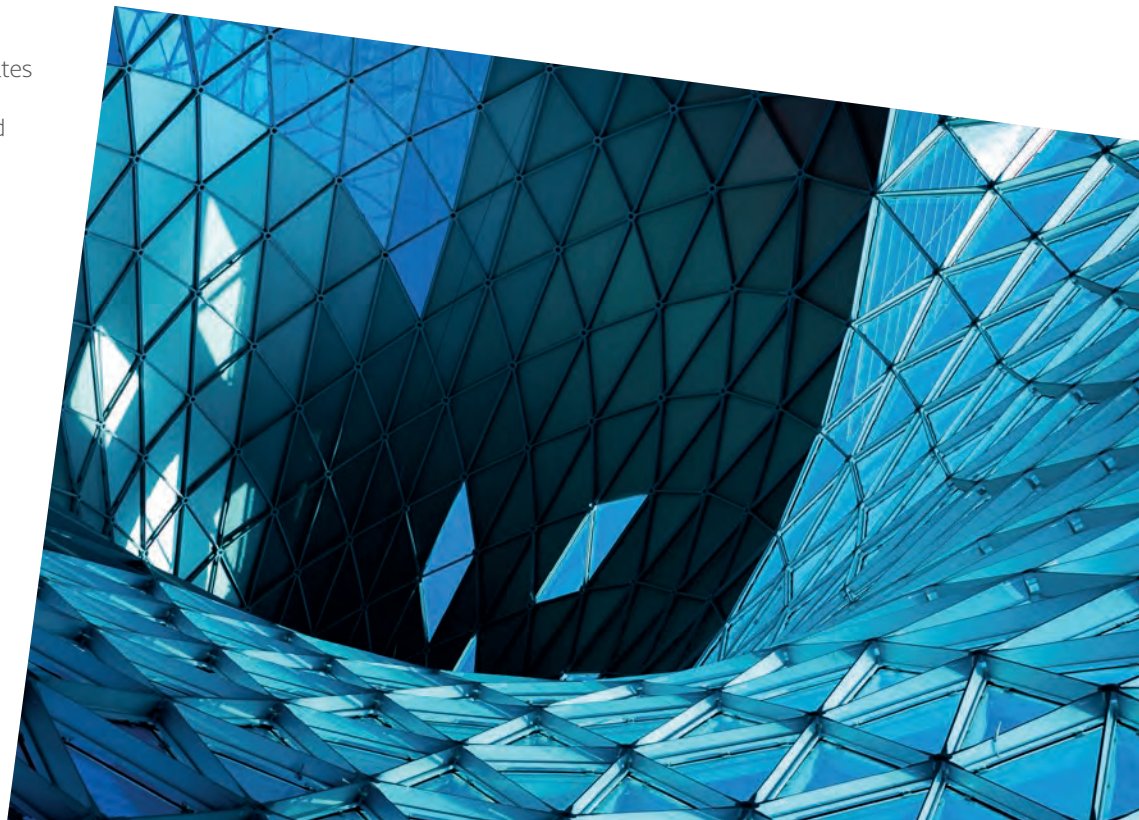

Russia

Contributed by Hogan Lovells

	Corporate liability	Public bribery	Commercial bribery	Extraterritorial applicability of criminal laws	Adequate procedures defense
Yes		✓	✓	✓	
No	✗ No criminal liability of companies; only administrative fines.				✗ No formal defense, but could be viewed as the absence of fault.

1. What are the laws relating to anti-corruption, bribery, and money laundering in your country?

In Russia, the key laws regarding anti-corruption, bribery, and money laundering are as follows:

- Law on Countering Corruption (Federal Law No. 273-ФЗ О *противодействии коррупции*), which establishes the legal and organizational framework for preventing and countering corruption.
- Law on Countering Legalization (Laundering) of Crime Proceeds and Terrorism Financing (Federal Law No. 115-ФЗ О *противодействии легализации (отмыванию) доходов, полученных преступным путем, и финансированию терроризма*), which establishes the legal and organizational framework for preventing and countering money laundering.
- Criminal Code (*Уголовный кодекс*), which establishes criminal liability for corruption and money laundering.
- Code of Administrative Offenses (*Кодекс об административных правонарушениях*), which establishes administrative liability for bribery and violation of anti-money laundering law.
- Civil Code (*Гражданский кодекс*), Law on State Civil Service (Federal Law No. 79-ФЗ *О государственной гражданской службе Российской Федерации*) and Law on the Basics of Protection of Citizens' Health (Federal Law No. 323-ФЗ *Об основах охраны здоровья граждан в Российской Федерации*), which set limitations on the provision of gifts to public officials, commercial entities and healthcare professionals.

2. Do the following persons or bodies have the right to be informed, or is the company obliged to inform the following persons/bodies, about an internal investigation before it is commenced? Do they have the right to participate in the investigation (e.g., in interviews)?

a. Employee representative bodies, such as a works council or union.

Requirements to inform employee representative bodies are only set by Russian law for investigations of accidents at work which caused death or injuries to employee(s). In case of investigations with a different subject, the company is not obliged to inform employee representative bodies about the investigation or invite them to participate in it.

A duty to inform employee representative bodies of other types of investigation can be provided by a collective agreement between the company and its employees. Also, the employee may authorize a trade union to represent his/her interests in labor relations with the employer, which may result in the trade union's participation in an investigation. These situations are rare in practice.
Trade unions (if they exist) usually get involved at a late stage, after the investigation is completed and the company proceeds with the dismissal of the employee.

b. Data protection officer or data privacy authority.

There is no requirement to inform a data protection officer or authority about an investigation or invite them to participate in it.

c. Other local authorities.

The requirement to inform certain local authorities about an investigation is set only for investigations of accidents at work which caused death or injuries to employee(s). A representative of certain local authorities must participate in an investigation of such accidents.

What are the consequences of non-compliance?

Not applicable since there are no such requirements.

3. Do employees have a duty to support the investigation, for instance by participating in interviews? Is there anything a company can do to require employees to support an investigation (e.g., advance consents)? Can companies impose disciplinary measures if an employee refuses to cooperate?

In general, an employee's refusal to participate in or support an investigation does not form grounds for dismissal or other disciplinary action. To be able to hold an employee liable for a failure to cooperate during an investigation, the company should provide, in mandatory employee documents, a specific obligation on employees to cooperate and indicate what actions are required from the employee, such as to provide oral and written explanations, to help gather relevant documents and to preserve documents related to the issues under investigation. Such mandatory documents could be a labor contract, job description, internal code of labor conduct, or ethics code, provided that such documents have been properly adopted by the company and countersigned (with wet ink signature) by employees. These documents could also indicate what actions are prohibited, e.g., distortion of documents related to the issues under investigation and disclosure of information about the investigation to third parties.

Every person has the constitutional right to refuse giving testimony incriminating himself/herself, his/her spouse or close relatives. Thus, the employee may not be held liable for refusing to provide responses of a self-incriminatory nature.

Finally, the employee may be dismissed for a failure to cooperate during the investigation only if he/she previously committed a disciplinary offense and less than one year has passed since he/she was held liable for it.

4. Can any labor law deadlines or statute of limitations be triggered, or any rights to sanction employees be waived, by investigative actions? How can this be avoided?

Disciplinary sanctions may only be imposed on an employee before the earliest of:

a. one month after a person whom he/she reports to at work (regardless of whether this person is authorised to impose disciplinary sanctions) became aware of the misconduct; and

b. six months (two years for violations of the anti-corruption law or misconduct revealed as a result of an audit or inspection) after the misconduct occurred.

If the employer intends to withhold from the employee's salary the amount of damages caused by him/her, it should issue an order within one month after the amount of the damage was finally determined. The employer may request reimbursement of direct actual damages only. The employer may withhold salary up to an amount not exceeding the employee's average monthly salary, whereas the recovery of the remaining amount of damages (if any) requires application to the court.

This should be taken into account when planning and documenting the investigation. If final conclusions have not yet been reached, the employer should make sure that any preliminary findings are marked as preliminary and subject to confirmation, and avoid definitive statements regarding the employee's misconduct or amount of damages caused by him/her.

5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:

a. Conducting interviews?

b. Reviewing emails?

c. Collecting (electronic) documents and/or other information?

d. Analyzing accounting and/or other mere business databases?

For any of the abovementioned activities the following restrictions shall be taken into account.

Personal data

Emails and other documents usually contain a wide range of personal data: name, address, email address, contact telephone number, instant messenger accounts, etc. Any operations with such information, including collection, storage, review and transfer, as a general rule require the data subject's prior express consent. Data protection law contains two main exceptions for cases where the data is processed:

1. to protect rights and legitimate interests of an operator or third parties; or
2. to perform duties and obligations imposed on the operator by Russian laws. In such cases the subject's consent is not required, but it is not clear whether the Russian data protection authorities will agree with the application of this ground to internal investigations. Recent comments of representatives of the Russian data protection authority, communicated during a conference organized by it in January 2020, confirmed that these grounds could apply to internal investigations.

Employers often obtain data processing consents from employees as part of their employment.

If such consents fully cover the investigation (e.g., types of data, types of operations, purpose of processing, possible recipients), they may be relied upon. Otherwise a separate consent should be obtained.

If the employer decides to transfer its employees' personal data to third parties involved in an internal investigation, they will need to enter into data processing agreements, setting out the purpose of data processing, operations to be performed, data protection obligations, etc.

Any transfer of employees' personal data to third parties also requires the written consent of employees. Thus, the safest approach would be to get the written consents of employees covering the purposes of internal investigations and the list of involved third parties that would process such data.

For information about cross-border transfer of personal data, see response to question 7f.

Information about private life

Collection, storage, use and dissemination of information about the private life of a person, including review of his/her correspondence and telephone conversations, requires his/her prior consent. This consent should be obtained before taking any actions that could lead to obtaining such information (i.e., usually at the start of the investigation and in any case before reviewing the employee's emails and other files).

Employers are advised to obtain such consents in advance, at the start of employment. Labor contracts or internal policies should contain provisions prohibiting employees from using business facilities (mailbox, cell phone, laptop, fax, etc.) for personal needs and allowing the employer to review any information stored at or derived from such facilities. Employers need to be especially careful with this type of information as the failure to handle it properly could trigger criminal liability under Russian law.

Other types of information

There are no statutes specifically blocking transfer and review of general financial, accounting or other business information abroad. Restrictions are set for information constituting state secrets or commercial secrets. Any access to such information requires a license/permit by state authorities (in case of state secret) or consent of the holder of the information (in case of commercial secret).

6. Do any specific procedures need to be considered in case a whistle-blower report sets off an internal investigation (e.g., for whistle-blower protection)?

Russian law provides neither for any specific procedures nor for any specific protection in connection with whistle-blower reports.

7. Before conducting employee interviews in your country, must the interviewee:

a. Receive written instructions?

There is no requirement to issue written instructions. When starting the interview, the interviewer generally briefly explains the reason for the interview and its procedure.

b. Be informed that he/she must not make statements that would mean any kind of self-incrimination?

There is no express requirement to do so. However, as stated in response to question 3, every person has a basic constitutional right to refuse providing information of a self-incriminatory nature. To enhance the evidentiary force of the interview, the interviewer could remind the employee about this right and reflect it in the interview protocol.

c. Be informed that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee (so-called Upjohn warning)?

There is no express requirement to do so, but it is regarded as best practice.

d. Be informed that they have the right to have their lawyer attend?

The interviewer may not prohibit the employee from bringing a lawyer to the interview. However, there is no formal requirement to inform the employee about this right. In practice, employees insist on legal representation only in exceptional cases.

e. Be informed that they have the right to have a representative from the works council (or other employee representative body) attend?

There is no formal requirement to do so.

f. Be informed that data may be transferred across borders (in particular to the United States of America)?

Restrictions apply in the case of personal data. Cross-border transfer of personal data, subject to certain limited exceptions, requires the prior written consent of the data subject. In case of a transfer of personal data to countries that are considered not to provide adequate protection of personal data (e.g., the United States of America, Hong Kong, China), the data subject's consent should be made in a specific form and include the data subject's identification document details and address, a detailed list of actions to be undertaken with respect to the data, purpose of the transfer, etc. In case of a transfer of personal data to countries that provide adequate protection of personal data, the consent may be made in a simple form.

g. Sign a data privacy waiver?

See response to question 5.

h. Be informed that the information gathered might be passed on to third parties, including local or foreign authorities?

Transfer of personal data or private data to authorities (as well as any other third parties) is subject to the employee's consent. For other types of information, there is no formal requirement to inform the employee that the information might be passed to authorities. It may be advisable to do so to enhance the evidentiary force of the interview.

i. Be informed that written notes will be taken?

There is no formal requirement to do so. To enhance the evidentiary force of the interview, the interviewer could prepare the interview minutes and ask the employee to sign it to confirm it is accurate.

8. Are document-hold notices or document-retention notices allowed in your country? Are there any specific rules that need to be followed (point in time, form, sender, addressees)?

There are no special rules governing such notices in Russia. Companies usually use them in the form of internal orders to make them mandatory for the company's employees. It is recommended to obtain a written acknowledgement from each of the company's employees that he/she reads the notice, understands its content and will comply with it.

9. Can attorney-client privilege (legal advice privilege) be claimed over findings of the internal investigation? What steps may be taken to ensure privilege is maintained?

The attorney-client privilege is known in Russia as "advocate secrecy". Advocate secrecy in Russia applies to any information relating to legal advice provided by a lawyer admitted to the Russian Bar who has the status of an "advocate". If an internal investigation is conducted by a duly retained advocate, it is likely that the information regarding the investigation and obtained in the course of the investigation will be protected by advocate secrecy.

It is highly recommended to mark all the documents produced or obtained in the course of an internal investigation as "confidential" and "subject to advocate secrecy" as well as to keep the most important documents and information in the offices or on the servers of the advocates to reduce the risk of their seizure by the authorities.

10. Can attorney-client privilege also apply to in-house counsel in your country?

The privilege applies only to advocates and does not apply to lawyers who are not advocates, whether they are inside or outside counsel. Advocates may only practice law as self-employed practitioners through specific Bar institutions; they are not allowed to be employed.

The said approach is also shared by foreign courts. In 2014 in Veleron Holding, B.V. v. BNP Paribas SA et al. the United States District Court for the Southern District of New York granted a request for production of communications with Russian attorneys on the basis that "Russian law does not recognize attorney-client privilege or work product immunity for communications between or work product provided by in-house counsel or "outside" counsel who are not licensed "advocates" registered with the Russian Ministry of Justice".

11. Are any early notifications required when starting an investigation?

a. To insurance companies (D&O insurance, etc.) to avoid losing insurance coverage

Only if provided by the terms of the insurance contract.

b. To business partners (e.g., banks and creditors)

Only if provided by the terms of a contract.

c. To shareholders

A company with a registered securities prospectus or a prospectus of bonds/Russian depositary receipts admitted to trade at a stock exchange is obliged to disclose information about any facts that, in the company's view, can materially affect the value of its securities. Theoretically, suspicions of certain violations and the opening of an internal investigation can fall within this category.

d. To authorities

Only for investigations of accidents at work, as mentioned in the response to question 2c above.

12. Are there any other immediate measures that have to be taken in your country, or would be expected by the authorities once an investigation starts, e.g., any particular immediate reaction to the alleged conduct?

Russian law does not provide for any such measures.

A company self-reporting to the authorities and cooperating with an investigation can release it from liability for bribery. Remediation actions can be treated by the court as a mitigating circumstance and reduce an administrative fine to be imposed on the company.

13. Is there a duty to self-report the discovered misconduct to prosecuting authorities?

Russian law sets a general obligation of companies to implement measures to prevent corruption and be cooperative with law enforcement authorities, which could imply a company's obligation to report possible irregularities to competent authorities. But no liability is provided for a company's failure to do so.

Companies are not required to alert the prosecutor office about the start of an investigation. It might be advisable to do so when there is a duty of self-reporting in relation to the issue under foreign law or the company's policy. It may also be advisable to self-report when the risk of leaks about the issue is significant and such self-reporting is part of the risk mitigation strategy.

If the company informs the prosecutor office about the investigation, the Russian authorities are expected to start their own investigation rather than interfere in the internal investigation.

14. If local prosecuting authorities become aware of an internal investigation, would they interfere in it, or ask for specific steps to be followed?

If the Russian authorities become aware of an internal investigation, they are likely to start their own investigation rather than interfere in the internal investigation. They may, however, ask for evidence gathered during internal investigations and the company will have to provide it unless covered by advocate secrecy.

15. Please describe the legal prerequisites for search warrants or dawn raids on companies in your country. If the prerequisites are not fulfilled, can the evidence gathered still be used against the company?

Searches at companies' offices are conducted on the basis of the investigator's orders while searches of private premises require the court's prior approval, which in exceptional urgent cases may be substituted by the court's subsequent approval. Searches at an advocate's offices or premises where he/she lives are subject to the court's prior approval and a number of additional limitations aimed at preserving advocate secrecy (e.g., presence of a representative of a local Bar Association).

Searches should be attended by a person in whose premises the search is carried out (in case of a company, its representative) and at least two attesting witnesses. An advocate of the person in whose premises the search is carried out may also attend. Searches shall not be carried out at night unless there is an urgent need.

Russian law does not have a separate concept of dawn raids. The investigator announces the decision to conduct the search when he/she arrives at the premises, shortly before the search. No advance notices are required.

If the search was conducted in violation of applicable laws, the evidence obtained upon it is deemed inadmissible.

16. Would voluntary self-disclosure or cooperation with state authorities help avoid or mitigate liability? What are the requirements to obtain the cooperation credit?

Under Russian criminal law, an individual is released from criminal liability for bribery if he/she:

- Voluntarily reported on the bribery to competent authorities. The self-reporting is considered to be voluntary when it is made not in connection with the state authorities' awareness of the crime.
- Actively helped uncover and/or investigate the crime. The active help with uncovering and/or investigation of the crime includes actions aimed at identifying people involved in the crime (e.g., bribe-giver, bribe-taker, intermediary) and the property used as the bribe.

The Russian administrative law contains a similar rule for releasing companies from administrative liability. A company is released from administrative liability for bribery if it facilitated:

- Uncovering and investigation of the administrative offense.
- Uncovering and investigation of the related crime.

This provision was adopted in August 2018, but applies to offenses committed before that date. The provision has not been extensively tested in practice and it remains to be seen how the Russian authorities will apply it and what level of cooperation they expect from companies.

17. Are deals, non-prosecution agreements, or deferred prosecution agreements available and common for corporations in your jurisdiction?

Non-prosecution agreements or deferred prosecution agreements are not available in Russia. A release from liability is granted where a person self-reported bribery and cooperated with the investigation.

18. What types of penalties (e.g., fines, imprisonment, disgorgement, or debarment) could companies, directors, officers, or employees face for misconduct of (other) individuals of the company?

Sanctions under criminal law include fines, disqualification, compulsory community service, corrective or compulsory labor, restriction of liberty, arrest, and jail. In addition, assets received as a result of certain criminal offenses are subject to confiscation.

Only individuals can be held criminally liable. There is no criminal liability for legal entities. If a criminal offense is committed in the interests or on behalf of a legal entity, an individual (director, officer or employee) involved in the offense will be held criminally liable while the company may be held liable for an administrative offense.

Administrative sanctions for companies are warnings, fines, confiscation, and suspension of operations.

A company may not participate in public procurement, under Federal Law No. 44-FZ On the Contract System in the Area of Procurement of Goods, Work and Services to Support State and Municipal Needs, dated 5 April 2013, if any of the following applies:

- The company was held liable for bribery within two preceding years.
- The operations of the company have been suspended as a punishment for an administrative offense.
- The company's director, member of the executive board, person performing functions of the CEO or chief accountant: (a) has been held criminally liable for economic crimes or bribery; (b) has been disqualified; or (c) has been prohibited to hold positions and carry out activities related to goods, works, or services which are the subject of the relevant procurement.

19. Can penalties for companies, their directors, officers, or employees be reduced or suspended if the company can demonstrate an efficient compliance system? Does this only apply in cases where efficient compliance systems have been implemented prior to the alleged misconduct?

There is no formal adequate procedures defense. But the fault of legal entities is defined in Russian administrative law as a failure to take all measures within a company's control to prevent an offense and thus a company that implemented an efficient compliance system prior to the alleged misconduct could be viewed as non-guilty and avoid liability for bribery. The current court practice on this issue is not favorable to companies; courts tend to recognize compliance measures taken by companies as insufficient.

We are not aware of cases where subsequent implementation of an efficient compliance system helped reduce the penalties.

20. Please briefly describe any investigation trends in your country (e.g., recent case law, upcoming legislative changes, or special public attention on certain topics).

The main focus of prosecution has been on public officials, state companies, and other recipients of state funds (e.g., private companies participating in public procurement). The latter can be held liable even if they participate in public tenders indirectly, through distributors.

The Russian competition authorities have been particularly active. They put intense efforts into countering price collusion and other competition violations at public tenders and share information with other state authorities about suspected irregularities (which also increases chances of bribery in public tenders being investigated). This makes companies in Russia pay increased attention to their practices of participating in public procurement, including through distributors and other intermediaries.

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Tajikistan

Contributed by GRATA International

	Corporate liability	Public bribery	Commercial bribery	Extraterritorial applicability of criminal laws	Adequate procedures defense
Yes		✓	✓	✓	
No	✗ No, companies cannot be held criminally liable, but can be subject to administrative liability				✗

1. What are the laws relating to anti-corruption, bribery, and money laundering in your country?

List of applicable laws:

i. Tajik Labour Code (*Трудовой Кодекс Республики Таджикистан*).

ii. Tajik Code of Criminal Procedure (*Уголовно Процессуальный Кодекс Республики Таджикистан*).

iii. Tajik Criminal Code (*Уголовный Кодекс Республики Таджикистан*).

iv. Anti-corruption Law (Law No. 100 *Закон Республики Таджикистан «О борьбе с коррупцией»*).

v. Information Law (Law No. 55 *Закон Республики Таджикистан «Об информации»*).

vi. Information Protection Law (Law No. 71 *Закон Республики Таджикистан «О защите информации»*).

vii. Data Protection Law (Law No. 1537 *Закон Республики Таджикистан «О защите персональных данных»*).

viii. Law «On the Agency for State Financial Control and Fight against Corruption of the Republic of Tajikistan» (Law No. 374 *Закон Республики Таджикистан «Об агентстве по государственному финансовому контролю и борьбе с коррупцией Республики Таджикистан»*).

2. Do the following persons or bodies have the right to be informed, or is the company obliged to inform the following persons/bodies, about an internal investigation before it is commenced? Do they have the right to participate in the investigation (e.g., in interviews)?

a. Employee representative bodies, such as a works council or union.

b. Data protection officer or data privacy authority.

c. Other local authorities.

What are the consequences of non-compliance?

The law does not explicitly provide for the above persons/bodies to have a right to be informed or for the company to be obliged to inform about internal investigations, except for cases of the investigation of an accident at work which caused death or injuries to the employee(s) which must be informed to an employee representative body. Also, a duty to inform an employee representative body can be provided by a company's local acts.

3. Do employees have a duty to support the investigation, for instance by participating in interviews? Is there anything a company can do to require employees to support an investigation (e.g., advance consents)? Can companies impose disciplinary measures if an employee refuses to cooperate?

Not explicitly provided for by the law. As a general recommendation, a company may include such an obligation in an employment contract or in a company's internal regulations. Having included such an obligation, a company may impose disciplinary measures on an employee for breach of the said obligation.

4. Can any labor law deadlines or statute of limitations be triggered, or any rights to sanction employees be waived, by investigative actions? How can this be avoided?

Under the labor law, a disciplinary measure is imposed on an employee no later than one month from the date of discovery of the violation and may not be imposed after six months following such violation. Investigative actions do not trigger or waive an employer's right to sanction employees.

5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:

a. Conducting interviews?

b. Reviewing emails?

c. Collecting (electronic) documents and/or other information?

d. Analyzing accounting and/or other mere business databases?

The requirements of the following laws must be taken into account upon collecting information:

i. Information Law No. 55.

ii. Information Protection Law No. 71.

iii. Data Protection Law No. 1537.

In accordance with the aforementioned laws, the general and main requirement is to obtain the consent of the data subject to collect, store, and process personal data.

The Data Protection Law also regulates the cross-border transfer of personal data, which can be done after the consent of the data subject is received.

6. Do any specific procedures need to be considered in case a whistle-blower report sets off an internal investigation (e.g., for whistle-blower protection)?

No specific procedures need to be considered as they are not provided by the law.

As a general rule under Article 6 of the Anti-corruption Law No. 100, a person who reports a corruption offense or otherwise assists in the fight against corruption is protected by the state, although the law does not explain what is understood by such protection.

7. Before conducting employee interviews in your country, must the interviewee:

a. Receive written instructions?

Not explicitly covered by the law. This applies in cases of questioning by bodies conducting initial inquiries in pre-trial criminal proceedings.

b. Be informed that he/she must not make statements that would mean any kind of self-incrimination?

Not explicitly covered by the law. This applies in cases of questioning by state authorities conducting initial inquiries in pre-trial criminal proceedings.

c. Be informed that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee (so-called Upjohn warning)?

Not explicitly covered by the law.

d. Be informed that they have the right to have their lawyer attend?

Not explicitly covered by the law. However, it is recommended to inform the employee on this in order to respect the generally accepted rights of defense and to have a lawyer.

e. Be informed that they have the right to have a representative from the works council (or other employee representative body) attend?

Not explicitly covered by the law.

f. Be informed that data may be transferred across borders (in particular to the United States of America)?

Yes, according to Articles 8, 18, and 21 of Data Protection Law No. 1537, the data subject should be given consent on the data collection and the possibility of transmitting personal data to third parties (including cross-border data transfer).

g. Sign a data privacy waiver?

According to Articles 11 of Data Protection Law No. 1537, the data subject shall either provide its consent or waiver for the collection and processing of personal data.

h. Be informed that the information gathered might be passed on to third parties, including local or foreign authorities?

An employee has to be informed that the information gathered might be passed on to third parties and, before the information is transferred, has to give his/her consent on such transfer.

i. Be informed that written notes will be taken?

Not explicitly covered by the law.
However, to enhance the evidentiary force of the interview, the interviewer could prepare the interview minutes and ask the employee to sign it to confirm its accuracy.

8. Are document-hold notices or document-retention notices allowed in your country? Are there any specific rules that need to be followed (point in time, form, sender, addressees)?

Not required by the law, although this may be prescribed by a company's internal documents.

9. Can attorney-client privilege (legal advice privilege) be claimed over findings of the internal investigation? What steps may be taken to ensure privilege is maintained?

The attorney-client privilege applies to any information relating to legal advice provided by a lawyer admitted to the Tajik Bar who has the status of an "advocate". If an internal investigation is conducted by an advocate, it is likely that the information regarding the investigation and obtained in the course of the investigation will be protected by advocate secrecy.

10. Can attorney-client privilege also apply to in-house counsel in your country?

Attorney-client privilege applies only to "advocates", i.e., lawyers who have been admitted to the Tajik Bar, and does not apply to lawyers who are not advocates.

11. Are any early notifications required when starting an investigation?

a. To insurance companies (D&O insurance, etc.) to avoid losing insurance coverage.

   Not explicitly required by the law, although the contract with insurance companies may prescribe this.

b. To business partners (e.g., banks and creditors).

   Not explicitly required by the law, although the contracts with business partners may prescribe this.

c. To shareholders.

   Not explicitly required by the law.

d. To authorities.

   Required only for investigations of accidents at work as indicated in the response to question two above.

12. Are there any other immediate measures that have to be taken in your country, or would be expected by the authorities once an investigation starts, e.g., any particular immediate reaction to the alleged conduct?

If there are indications of an offense (except for the offenses for which pre-trial investigation is not mandatory), the authority conducting the initial inquiry is entitled to institute criminal proceedings. In accordance with the Tajik Criminal Code, the person conducting the initial inquiry shall take prompt investigative and other procedural steps to identify and establish the traces of an offense: inspection, seizure, search, seizure of postal consignments, telegraphic and other communications, wired and mailed, tapped and recorded conversations, presented for identification, examined, detained and interrogated suspects, interviewed victims and witnesses.

13. Is there a duty to self-report the discovered misconduct to prosecuting authorities?

There is a duty to report to prosecuting authorities on a conclusive knowledge of a serious or particularly serious crime that is being prepared or committed, as well as failure to report the conclusive knowledge of a perpetrator of the crime or its location, is a violation of criminal law. Failure to report on this entails criminal liability.

14. If local prosecuting authorities become aware of an internal investigation, would they interfere in it or ask for specific steps to be followed?

Local prosecuting authorities will not interfere in an internal investigation unless there is an application by one of the parties involved in the process.

15. Please describe the legal prerequisites for search warrants or dawn raids on companies in your country. If the prerequisites are not fulfilled, can the evidence gathered still be used against the company?

Searches in companies' offices are conducted on the basis of the court's decision. If there is a risk that an object which is searched may be lost, damaged, or used for criminal purposes because of the delay, a search may be conducted on the basis of the prosecutor's decision which has to be further approved by the court.

Searches should be attended by a person in whose premises the search is carried out (in case of a company, its representative) and at least two attesting witnesses.

There is no dawn raid concept under Tajik law.

16. Would voluntary self-disclosure or cooperation with state authorities help avoid or mitigate liability? What are the requirements to obtain the cooperation credit?

Under Tajik law, the criminal liability may be mitigated if there is a voluntary self-disclosure or cooperation with investigative authorities in place.

The administrative liability may also be mitigated in case of self-disclosure.

17. Are deals, non-prosecution agreements, or deferred prosecution agreements available and common for corporations in your jurisdiction?

Not available in Tajikistan.

18. What types of penalties (e.g., fines, imprisonment, disgorgement, or debarment) could companies, directors, officers, or employees face for misconduct of (other) individuals of the company?

According to the Tajik Criminal Code individuals (founders, directors, and employees of companies) may be held criminally liable and can be punished by a fine, disqualification from holding certain positions or engaging in certain activities, confiscation of property, and imprisonment.

Companies cannot be criminally liable, but can be subjects of administrative liability. Administrative sanctions for companies are warnings, fines, confiscation, and suspension of operations, but fines are applied more frequently.

19. Can penalties for companies, their directors, officers, or employees be reduced or suspended if the company can demonstrate an efficient compliance system? Does this only apply in cases where efficient compliance systems have been implemented prior to the alleged misconduct?

The law does not provide for any reduced or suspended penalties for companies, their directors, officers or employees, even if the company has implemented efficient compliance system. As a general recommendation though, an efficient compliance system might be helpful in reducing/mitigating the risk of directors, officers, or employees committing a crime.

20. Please briefly describe any investigation trends in your country (e.g., recent case law, upcoming legislative changes, or special public attention on certain topics).

Currently, we are not aware of any upcoming legislative changes. It is worth noting that the law-making process in Tajikistan is not as informative as it might be in other countries. Commonly, the public learns about the new law after its adoption and not during its development.

As for the corruption cases, there is no specific sector standing out among the others; it is relatively equal across the board. Although it is worth noting that during the period of entrance examinations to universities, there are more frequent cases of bribes associated with admission to universities (the sums depend on the university and faculty, varying from US$3,000 to US$6,000).

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Turkmenistan

Contributed by Centil Law Firm

	Corporate liability	Public bribery	Commercial bribery	Extraterritorial applicability of criminal laws	Adequate procedures defense
Yes		✓	✓	✓	
No	✗				✗

1. What are the laws relating to anti-corruption, bribery, and money laundering in your country?

- Criminal Code (*Уголовный кодекс*).
- Criminal Procedural Code (*Уголовно-процессуальный кодекс*).
- Anti-Corruption Law (No. 35-V *Закон о противодействии коррупции*).
- Law on Combating Money Laundering, Terrorism Financing, and the Financing of the Proliferation of Weapons of Mass Destruction (No. 261-V *Закон о противодействии легализации доходов, полученных преступным путем, финансированию терроризма и финансированию распространения оружия массового уничтожения*).
- Law on Currency Regulation and Currency Control in Foreign Economic Activities (No. 230-IV *Закон о валютном регулировании и валютном контроле во внешнеэкономических отношениях*).

2. Do the following persons or bodies have the right to be informed, or is the company obliged to inform the following persons/bodies, about an internal investigation before it is commenced? Do they have the right to participate in the investigation (e.g., in interviews)?

a. Employee representative bodies, such as a works council or union.

b. Data protection officer or data privacy authority.

c. Other local authorities.

What are the consequences of non-compliance?

Turkmen laws do not provide for internal investigation procedure. There are no provisions allowing persons/bodies to be informed about an internal investigation.

However, under the general rules of the Labor Code (*Трудовой кодекс*) and Law on Trade Unions, their Rights and Guarantees (Law No. 443-IV О *профессиональных союзах, их правах и гарантиях деятельности*), the employees' representative body is entitled to represent and protect the rights and interests of its members as well as to control the employees' compliance with labor regulations.

If internal documents of the trade union or of the company provide for labor unions to have a right to be informed about an internal investigation and participate in interviews, such rights will be enforceable.

3. Do employees have a duty to support the investigation, for instance by participating in interviews? Is there anything a company can do to require employees to support an investigation (e.g., advance consents)? Can companies impose disciplinary measures if an employee refuses to cooperate?

Generally, in case of an internal investigation, such duty is not required under the laws of Turkmenistan. However, if internal regulations, collective agreements, or internal orders provide that employees have a duty to support the investigation, the relevant employee shall comply with such a duty.

In case employees have a duty to cooperate, and refuse to do so, the employer has a right to impose the following disciplinary measures: a warning or a reprimand.

4. Can any labor law deadlines or statute of limitations be triggered, or any rights to sanction employees be waived, by investigative actions? How can this be avoided?

Under Turkmen labor law (Article 166 of the Labor Code), disciplinary sanctions may be imposed upon employees within:

a. one month after the misconduct is identified; and/or

b. six months after the misconduct occurred (or two years if the misconduct is identified as a result of an audit or inspection).

5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:

a. Conducting interviews?

b. Reviewing emails?

c. Collecting (electronic) documents and/or other information?

d. Analyzing accounting and/or other mere business databases?

We would advise to consider the following regulations before conducting any activity above:

- Law on Privacy Information and its Protection (Law No. 519-V *Об информации о личной жизни и ее защите*).

  In accordance with the Law on Privacy Information and its Protection when investigations are held by the government authorities, there is no need to obtain the consent from a person in order to collect and use his/her personal information.

- Law on Regulation of the Internet and Development of Provision of Internet Services in Turkmenistan (Law No. 159-V *О правовом регулировании развития сети Интернет и оказания интернет-услуг в Туркменистане*).

  Internet providers, operators of websites, and online services have an obligation to cooperate with government authorities during the investigative process and provide full assistance to such authorities. In addition, internet providers and operators have a duty of non-disclosure of any information related to the investigation.

- Law on the Protection of State Secrets (Law No. 84-I *О защите государственных секретов*).

  Information qualified as state secret may be disclosed only in accordance with special procedures established by the Cabinet of Ministers of Turkmenistan.

- Law on Commercial Secrets (Law No. 53-II *О коммерческой тайне*).

  Officials of state authorities who conduct the investigative process have the right to request and receive the relevant company's information which is qualified as commercial secret. The state officials have a duty of non-disclosure of such information to third parties that are not authorized to receive such information.

- Labor Code.

  In the course of the investigative process, all constitutional and other rights of employees ought to be respected, regardless of the alleged type of crime they are accused of.

6. Do any specific procedures need to be considered in case a whistle-blower report sets off an internal investigation (e.g., for whistle-blower protection)?

Procedures for conducting an internal investigation are not provided under the laws of Turkmenistan. Therefore, there are no legal requirements to be considered in case a whistle-blower report sets off an internal investigation unless such procedure is provided in internal regulations of the relevant company.

7. Before conducting employee interviews in your country, must the interviewee:

a. Receive written instructions?

b. Be informed that he/she must not make statements that would mean any kind of self-incrimination?

c. Be informed that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee (so-called Upjohn warning)?

d. Be informed that they have the right to have their lawyer attend?
e. Be informed that they have the right to have a representative from the works council (or other employee representative body) attend?
f. Be informed that data may be transferred across borders (in particular to the United States of America)?
g. Sign a data privacy waiver?
h. Be informed that the information gathered might be passed on to third parties, including local or foreign authorities?
i. Be informed that written notes will be taken?

There are no well-defined rules under Turkmen laws. However, we would advise to follow the steps defined above since they are considered best practice.

8. Are document-hold notices or document-retention notices allowed in your country? Are there any specific rules that need to be followed (point in time, form, sender, addressees)?

Document-hold notices or document-retention notices are not prohibited; however they are not required under Turkmen laws. There are no specific requirements regarding such notices.

9. Can attorney-client privilege (legal advice privilege) be claimed over findings of the internal investigation? What steps may be taken to ensure privilege is maintained?

Under the Law on Advocacy and Legal Profession (Law No. 105-IV *Закон об адвокатуре и адвокатской деятельности*), any information received from the client by the advocate (i.e., a lawyer who obtained a status of "advocate") while providing legal advice is covered by attorney-client privilege, which is known as "advocate secrecy".

However, if information received from the client relates to national, state, or public security, such information may not be protected under attorney-client privilege.

10. Can attorney-client privilege also apply to in-house counsel in your country?

Attorney-client privilege applies to advocates only and is not applicable to in-house counsel or other lawyers who are not advocates. Advocates are not allowed to be employed, but act on the basis of the Agreement for Legal Assistance.

11. Are any early notifications required when starting an investigation?

a. To insurance companies (D&O insurance, etc.) to avoid losing insurance coverage.
b. To business partners (e.g., banks and creditors).
c. To shareholders.
d. To authorities.

Provision of such notifications is not required by law. However, the obligation to notify these entities can be imposed on a company as a contractual obligation or by virtue of internal documents.

12. Are there any other immediate measures that have to be taken in your country, or would be expected by the authorities once an investigation starts, e.g., any particular immediate reaction to the alleged conduct?

Not required by law.

13. Is there a duty to self-report the discovered misconduct to prosecuting authorities?

The duty to self-report the discovered misconduct is imposed only on state authorities under Article 15 of the Anti-Corruption Law. There is no such duty for companies.

14. If local prosecuting authorities become aware of an internal investigation, would they interfere in it or ask for specific steps to be followed?

Article 7 of the Anti-Corruption Law provides that if state authorities become aware of any corruption-related crime, they should take all necessary measures in case of misconduct in a company (including intervention in the company's investigation). The laws do not provide for specific steps the local authorities may ask the company to take in such an instance. It is most likely that state authorities will begin their own investigation process.

15. Please describe the legal prerequisites for search warrants or dawn raids on companies in your country. If the prerequisites are not fulfilled, can the evidence gathered still be used against the company?

In accordance with Article 279 of the Criminal Procedural Code, search and seizure of items which are necessary for criminal investigations are conducted in the presence of the representative of the company. The results of conducted searches and seizures shall be recorded in a protocol issued by state authority representatives. Articles 124 and 125 of the Criminal Procedural Code provide that evidence collected in violation of the due legal process are inadmissible before the court.

16. Would voluntary self-disclosure or cooperation with state authorities help avoid or mitigate liability? What are the requirements to obtain the cooperation credit?

According to Article 57 of the Criminal Code voluntary self-disclosure and cooperation with state authority will mitigate liability. Generally, there are no formal requirements to obtain the cooperation credit in the public domain. However, such requirements may exist in internal protocols/regulations of state authorities which are not available to the public.

Pursuant to Article 185 of the Criminal Code, if the person who has given a bribe voluntarily discloses such misconduct, he/she can be released from criminal liability.

17. Are deals, non-prosecution agreements, or deferred prosecution agreements available and common for corporations in your jurisdiction?

No, they are not available. Corporations may not be held criminally liable under the laws of Turkmenistan. As a result, laws do not provide for any non-prosecution/deferred prosecution agreements for corporations.

18. What types of penalties (e.g., fines, imprisonment, disgorgement, or debarment) could companies, directors, officers, or employees face for misconduct of (other) individuals of the company?

Only individuals may be subjects of criminal liability in Turkmenistan. The following types of penalties could be imposed upon individuals of the company:

- Imprisonment from three to 20 years.
- Freezing of bank accounts and/or seizure of property.
- Fine in the amount of US$744 to US$ 17,500.
- Debarment from work position.

19. Can penalties for companies, their directors, officers, or employees be reduced or suspended if the company can demonstrate an efficient compliance system? Does this only apply in cases where efficient compliance systems have been implemented prior to the alleged misconduct?

Not required by law.

20. Please briefly describe any investigation trends in your country (e.g., recent case law, upcoming legislative changes, or special public attention on certain topics).

Due to a lack of public information relating to legislative proposals and absence of any comments on behalf of the public enforcement services, it is quite challenging to highlight any specific trends in the current situation.

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Ukraine

Contributed by Sayenko Kharenko

	Corporate liability	Public bribery	Commercial bribery	Extraterritorial applicability of criminal laws	Adequate procedures defense
Yes	✓	✓	✓	✓	
No					✗

1. What are the laws relating to anti-corruption, bribery, and money laundering in your country?

The laws applicable to anti-corruption, bribery, and money laundering in Ukraine are as follows:

- Criminal Code of Ukraine (*Кримінальний кодекс України*).
- Code on Administrative Offenses of Ukraine (*Кодекс України про адміністративні правопорушення*).
- Law of Ukraine on Banks and Banking (Law No. 2121-III *Закон України про банки та банківську діяльність*).
- Law of Ukraine on Public Procurement (Law No. 922-VIII *Закон України про публічні закупівлі*).
- Law of Ukraine on Prevention of Corruption (Law No. 1700-VII *Закон України про запобігання корупції*).
- Law of Ukraine on Prevention and Counteraction of the Legalization (Laundering) of the Proceeds from Crime, Terrorist Financing, and Financing of the Proliferation of Weapons of Mass Destruction (Law No. 361-IX *Закон України про запобігання та протидію легалізації (відмиванню) доходів, одержаних злочинним шляхом, фінансуванню тероризму та фінансуванню розповсюдження зброї масового знищення*).

2. Do the following persons or bodies have the right to be informed, or is the company obliged to inform the following persons/bodies, about an internal investigation before it is commenced? Do they have the right to participate in the investigation (e.g., in interviews)?

a. Employee representative bodies, such as a works council or union.

Trade unions established within individual companies (so-called "primary trade union organizations") will only have the right to be informed about and participate in an internal investigation when the investigation relates to accidents or occupational health of employees who are members of the respective trade union (i.e., an illness that occurs as a result of work or occupational activity). Violation of this right can result in a small fine.

b. Data protection officer or data privacy authority.

Companies are obliged to notify the data protection authority in Ukraine (the Ukrainian Parliament Commissioner for Human Rights) about the processing of sensitive personal data, not related to employment issues, within 30 days after the start of processing. This obligation also applies to internal investigations where such data is being processed.

Non-compliance can lead to an administrative fine of up to UAH6,800 (around US$242) for each violation and up to UAH34,000 (around US$1,214) for repeated violations.

There are no obligations to notify the data protection officer(s) of the company being investigated.

c. Other local authorities.

Officials of state-owned companies (more than 50% of state ownership) and the companies involved in public procurement procedures for projects equal to or exceeding UAH20 million (around US$714,285), upon becoming aware of or receiving information about any corruption incident or possible incident, must take measures to stop the potential violation and immediately, but not later than within 24 hours, report to the responsible anti-corruption state authorities.

What are the consequences of non-compliance?

Non-compliance with the notification requirement by an official may lead to an administrative fine of up to UAH6,800 (around US$242).

Financial institutions (e.g., banks and insurance companies), stock exchanges, and other companies conducting financial monitoring have to notify the State Financial Monitoring Service of Ukraine and the respective law enforcement authorities within one day when a financial transaction conducted or monitored by them is, or may be, related to a crime.

Non-compliance with the notification requirement by a financial institution may lead to several sanctions, including an administrative fine of up to UAH340,000 (around US$12,140) up to the license cancellation, a requirement to suspend from work the responsible employee, and disgorgement agreement with a specifically identified disgorgement amount.

Private companies are not obliged to notify law enforcement authorities or involve them in internal investigations.

However, the company must notify the law enforcement authorities about the results of the investigation if a corruption offense is determined. Furthermore, under Ukrainian law, there is an obligation upon individuals to notify the authorities if they become aware of conduct that pertains to certain serious and/or particularly serious crimes.

3. Do employees have a duty to support the investigation, for instance by participating in interviews? Is there anything a company can do to require employees to support an investigation (e.g., advance consents)? Can companies impose disciplinary measures if an employee refuses to cooperate?

There is no explicit obligation under Ukrainian law for employees to support an internal investigation. However, the employee is obliged to fulfil any lawful order of the employer, which is in line with the designated job description. This can also include an order to support an internal investigation.

Based on data protection obligations and practicability reasons, we suggest including a separate clause in the employment agreement outlining in more detail employees' obligations to support any internal investigation under the instruction of the supervising management. We further recommend obtaining an explicit consent to process the personal data of an employee during such an investigation, including the cross-border transfer of data to other countries.

Not supporting the investigation may trigger disciplinary penalties, including a dismissal.

4. Can any labor law deadlines or statute of limitations be triggered, or any rights to sanction employees be waived, by investigative actions? How can this be avoided?

There are no labor law deadlines/statute of limitations triggered or any rights to sanction employees waived by investigative actions. However, disciplinary actions against an employee can only be brought within six months from the violation. This time limit only affects labor law actions against the employee.

5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:

a. Conducting interviews?

The provisions relating to personal data are contained in the Law of Ukraine on Personal Data Protection (Law No. 2297-VI *Закон України про захист персональних даних*). Currently, Ukrainian lawmakers are working on an update that will reflect the standards of the EU General Data Protection Regulation 2016/679.

Personal data includes all information that can be used to identify an individual. If a company or its representatives collect personal data of individuals during an internal investigation, the company is obliged to inform the respective data subjects about the purposes of the collection, the respective processing actions (e.g., transfer, retention, and use of the data), the persons involved in the processing actions, the data subject's rights, and potential transfers of the data to foreign countries.

We suggest obtaining a waiver of data protection rights from the interviewee beforehand and/or asking to sign a commonly used privacy notice.

Ukrainian law prohibits the transfer of personal data from Ukraine to outside Ukraine if the relevant country does not reflect an adequate level of data protection compared to the one based on Ukrainian law. Under Ukrainian law, "safe" countries are, in particular:

- Member States of the European Economic Area.
- Signatories of the ETS No. 108 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.
- Countries with a data protection regime approved by the Government of Ukraine (such approvals do not exist for now).

Ukrainian law further prohibits the provision of data or information relating to state secrets or bank secrets, falling under a professional confidentiality obligation (e.g., doctor-patient, attorney-client), and specifically labelled as confidential information by the owning company. During the internal investigation, interviewees with access to such information are prohibited from disclosing such information. Ukrainian law only allows the release of such information when such information is officially requested by public authorities or such a transfer is based on a court ruling. We suggest assessing beforehand if the information requested from the interviewee falls into one of the above categories.

We suggest anonymizing the collected personal data as far as possible to avoid any potential violation of Law of Ukraine on Personal Data Protection No. 2297-VI and not to burden the investigating company with unnecessary notification obligations.

b. Reviewing emails?

Reviewing private emails without a court ruling can constitute a violation of the constitutional right of secrecy of correspondence and can be a criminal offense.

The potential obligations for the investigating company in relation to data privacy, state secrecy, and confidentiality outlined above at question 5a also apply in relation to the collection and review and other use of emails of employees and/or third parties. The investigating company would have an obligation to inform each data subject about the processing actions and the purpose, as well as about safeguarding actions undertaken (e.g., in cases of data transfer abroad).

In this regard, we also suggest anonymizing the collected personal data as far as possible.

c. Collecting (electronic) documents and/or other information?

The potential obligations for the investigating company in relation to data privacy, state secrecy, and confidentiality outlined above at question 5a also apply in relation to the collection and use of other documents and information.

d. Analyzing accounting and/or other mere business databases?

Accounting or business databases may contain personal data or information constituting state secrets or bank secrets. In such cases, the restrictions and obligations as outlined above at question 5a would also apply here.

6. Do any specific procedures need to be considered in case a whistle-blower report sets off an internal investigation (e.g., for whistle-blower protection)?

Recent updates to the Law of Ukraine on Prevention of Corruption (Law No. 1700-VII) (the "**Anti-Corruption Law**") brought several innovations regarding whistle-blowing. However, for the private sector, these new provisions only apply to companies participating in public procurement procedures for projects equal to or exceeding UAH20 million (around US$714,285).

According to these recent changes, the company's official shall conduct an initial assessment of the whistle-blower report within a term not exceeding 10 business days. The results of such evaluation shall be provided to the whistle-blower in writing within three days.

The full internal investigation shall be conducted within 30 days from the day the initial assessment has been completed. The period of the internal investigation can be extended to 45 days if necessary. The whistle-blower shall be kept informed.

Upon the completion of the internal investigation, the responsible official has to report any identified misconduct and the investigation results to the respective law enforcement authorities.

The initial assessment and the investigation should be documented in an adequate form. The record shall be kept by the company for three years since obtaining such data.

The officials receiving the whistle-blower reports and other persons responsible for conducting the internal investigation shall guarantee the confidentiality and anonymity of the whistle-blower and their close relatives.

For private companies that do not fall within the scope of the Anti-Corruption Law (please see above), only the general employment law principles apply. Based on these, employees cannot be dismissed or otherwise penalized for reporting even an indication of illicit behavior.

If the whistle-blower report is filed before law enforcement authorities (e.g., the prosecutor's office, the Police, the National Anti-Corruption Bureau, the National Agency on Corruption Prevention), the whistle-blower can request protection from the authorities if a threat to their life exists.

Only companies falling within the scope of the Anti-Corruption Law (please see above), must have an anti-corruption program (the "**Model Anti-Corruption Program**") in place. A template for such a program was published by the respective anti-corruption authority. Such programs must also include processes concerning the conduct of internal investigations, including, responsibilities, the timing of the investigation, internal and external reporting obligations, documentation, retention periods, and retaliation measures.

Where the internal investigation relates to potential criminal conduct, as a general rule, all companies are obliged to notify law enforcement authorities about "serious" and "particularly serious" crimes. A failure to notify is a crime.

7. Before conducting employee interviews in your country, must the interviewee:

a. Receive written instructions?

There is no obligation for a company to provide any instructions to its employees before interviewing them as part of an internal investigation.

b. Be informed that he/she must not make statements that would mean any kind of self-incrimination?

The right not to incriminate oneself is a constitutional right. An employee can assert it during any internal investigations.

There is no obligation of the employer to inform any employees about this right.

c. Be informed that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee (so-called Upjohn warning)?

There is no such concept in Ukrainian law and no obligations in this regard.

d. Be informed that they have the right to have their lawyer attend?

There is no such obligation for the employer. Such an obligation only applies to public criminal proceedings and not interviews conducted as part of an internal investigation. However, the employee, at its sole discretion, has a right to take a lawyer to the interview.

e. Be informed that they have the right to have a representative from the works council (or other employee representative body) attend?

There is no general obligation for the employer to notify the interviewed employees about such right. Further, such a right only exists where the investigation relates to accidents and/or occupational professional diseases of employees, who are members of the respective trade union.

f. Be informed that data may be transferred across borders (in particular to the United States of America)?

Yes. When transferring personal data outside of Ukraine, the employee must be provided with prior notification, also including the potential cross-border transfer. In cases in which the data will be transferred to "not safe" countries, like, e.g., the U.S. (for countries with an appropriate level of data protection, please see question 5a above), the employer would need to obtain prior explicit consent for the cross-border data transfer.

When the receiving country does not have the appropriate level of protection (e.g., the United States of America), the employer can only transfer personal data to such country if one of the following exceptions is met:

- It has received additional explicit consent from the data subject for the transfer.
- To protect the public interest or perform legal requirements.

The law requires the employer to inform its employees that their personal data has been passed to third parties within ten days after the transfer. This can be done by the prior signing of a privacy notice. Such notification is not required when a cross-border transfer is required by investigating authorities, or if the employee signed a waiver.

g. Sign a data privacy waiver?

Ukrainian law does not require employees to waive their data privacy rights before conducting employee interviews. However, the employer can ask the employee to sign such a waiver on a voluntary basis.

h. Be informed that the information gathered might be passed on to third parties, including local or foreign authorities?

Yes. The law requires the employer to inform its employees that their personal data has been passed to third parties within ten days after the transfer.

i. Be informed that written notes will be taken?

Ukrainian law does not provide such an obligation.

8. Are document-hold notices or document-retention notices allowed in your country? Are there any specific rules that need to be followed (point in time, form, sender, addressees)?

Yes. Although it is currently not common practice in Ukraine, we recommend to always use document-retention notices in connection with internal investigations and to include an adequately long period of retention. Such an approach can be very helpful in case of later investigations conducted by law enforcement authorities (e.g., the prosecutor department).

9. Can attorney-client privilege (legal advice privilege) be claimed over findings of the internal investigation? What steps may be taken to ensure privilege is maintained?

The attorney-client privilege can be claimed in Ukraine and has no time limitation. However, attorney-client privilege covers only attorneys who have a special attorney license and are independent.

The attorney-client privilege covers client information, substantive advice, consultations, clarifications, documents drafted by the attorney, and other documents and information received from the client as part of the provision of legal advice. It also applies to the information provided by a person who consulted an attorney but did not become a client.

We suggest trying to involve as many possible outside attorneys when conducting an internal investigation to secure the privilege rights, also with regard to foreign law regimes (e.g., the United States of America or the European Union).

In practice, Ukrainian public authorities occasionally still infringe the attorney-client privilege. However, there are court proceedings that can help to protect the privilege rights.

10. Can attorney-client privilege also apply to in-house counsel in your country?

Attorney-client privilege in Ukraine covers only attorneys who have a special attorney license and are independent. Most lawyers practicing in Ukraine, including in-house counsel, do not have such a license. In-house counsel (having an attorney license) can also act as attorneys for their employers on the basis of a legal assistance agreement.

However, an in-house counsel may not be seen to be independent as necessary to obtain attorney-client privilege. Therefore, attorney-client privilege may not apply to in-house counsel. It will have to be assessed based on future case law whether the formal requirements will be enough to obtain a solid attorney-client privilege also for in-house counsel.

Nevertheless, we suggest trying to involve as many possible outside attorneys when conducting an internal investigation to secure the privilege rights, also with regard to foreign law regimes (e.g., the United States of America or the European Union).

11. Are any early notifications required when starting an investigation?

a. To insurance companies (D&O insurance, etc.) to avoid losing insurance coverage.

D&O insurance is generally not provided by Ukrainian insurance companies. For other types of insurance (e.g., professional insurance, third-party insurance, product liability insurance), notification obligations are set by individual insurance contracts.

b. To business partners (e.g., banks and creditors).

Relations between business partners are usually regulated by contract. Notification obligations may be set out in such contracts.

c. To shareholders.

The law does not specify an express obligation to inform shareholders when starting an internal investigation.

However, under Ukrainian law, the director has a fiduciary duty to act in the interests of the company, in good faith and reasonably. This obligation can also include an upfront notification of shareholders before launching an internal investigation. Such an obligation should be assessed on a case-by-case basis.

There is an additional obligation of the director to provide information about the company's activity, also including an internal investigation, at the shareholder's explicit request.

The Model Anti-Corruption Program establishes an obligation to notify shareholders if a corruption violation has occurred or is suspected. Although this obligation is only obligatory for companies that participate in a public procurement procedure for projects exceeding UAH20 million (around US$714,285), and only for the time of participating in the specific tender procedure, state authorities recommend that other companies also should use such an approach. However, this recommendation is not binding.

Corporate governance rules in this regard are not well developed on a legislative level, although usually, companies develop detailed internal regulations. An obligation to notify the shareholders might also be based on the individual charter or policy of the respective company.

d. To authorities.

The Anti-Corruption Law and Model Anti-Corruption Program provide an obligation for the officials of the company to notify the respective public authorities about an administrative or criminal corruption offense known and discovered within an internal investigation. The anti-corruption program is obligatory for public companies and companies participating in a public procurement procedure for projects exceeding UAH20 million (around US$714,285) and only with regard to the specific tender procedure. State authorities recommend that other companies also should adopt this approach, but this recommendation is not binding.

12. Are there any other immediate measures that have to be taken in your country or would be expected by the authorities once an investigation starts, e.g., any particular immediate reaction to the alleged conduct?

Private companies have no obligation to take immediate measures with regard to an internal investigation. However, as a matter of practice, the company should try to stop any ongoing misconduct and consider remediation measures.

13. Is there a duty to self-report the discovered misconduct to prosecuting authorities?

As a general rule, all entities are obliged to notify law enforcement authorities about "serious" and "particularly serious" crimes, e.g., bribery, money laundering, and tax evasion. Failure to notify is a crime.

Private companies falling in the scope of the Anti-Corruption Law (please see above, under 6.) have the duty to self-report every discovered misconduct connected to corruption to the prosecuting authorities and other law enforcement agencies.

14. If local prosecuting authorities become aware of an internal investigation, would they interfere in it or ask for specific steps to be followed?

No. There are no specific steps required by prosecutors regarding internal investigations. However, the prosecutor department can investigate in parallel and request to support them.

15. Please describe the legal prerequisites for search warrants or dawn raids on companies in your country. If the prerequisites are not fulfilled, can the evidence gathered still be used against the company?

Searches can be conducted only within open criminal investigations. They are based on the mandatory ruling of the investigating judge. The initiators can be a prosecutor or an investigator together with a prosecutor.

The court ruling must be provided to the company. The scope of the search must be within its outlined purpose. When the search is at a company's premises, the search record must be provided to the representative of the company.

Dawn raids without the prior approval of the investigating judge can be conducted by the investigator in exceptional cases, such as to save people's lives or when chasing a suspect. Even in this case, the dawn raid must be authorized by the investigating judge, retrospectively. If the dawn raid is not subsequently authorized, its results are considered invalid and inadmissible.

16. Would voluntary self-disclosure or cooperation with state authorities help avoid or mitigate liability? What are the requirements to obtain the cooperation credit?

Ukrainian legislation does not explicitly identify the requirements on the reduction of penalties or conditions for avoiding liability.

Cooperation with state authorities can help to avoid or mitigate liability. However, it is left to their discretion to decide whether or not cooperation credit can be awarded. They do not have any obligation on this matter or any structured approach (guidelines, etc.) in this regard.

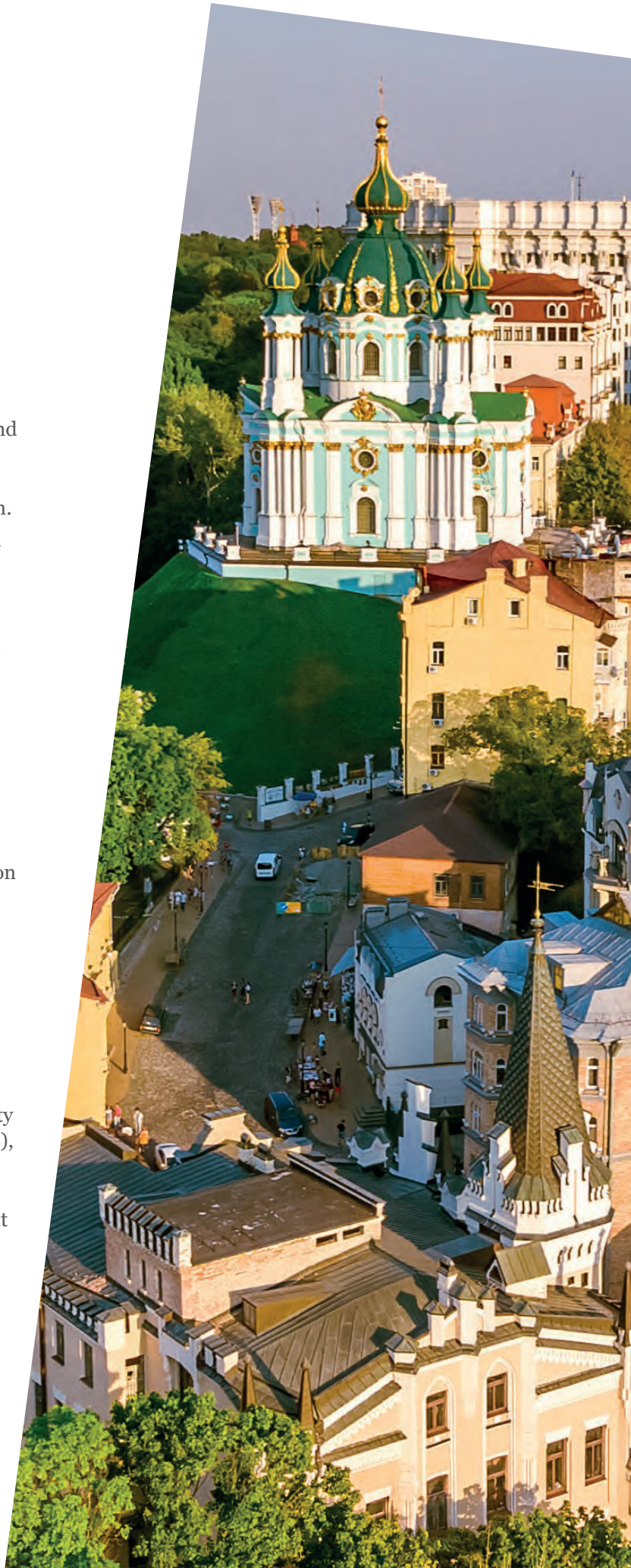
17. Are deals, non-prosecution agreements, or deferred prosecution agreements available and common for corporations in your jurisdiction?

Ukrainian law does not provide for deferred prosecution agreements or non-prosecution agreements. However, in criminal proceedings, there is the possibility to conclude:

- A settlement agreement between the victim and the accused of minor crimes, crimes deemed to be of average weight and in the criminal proceedings in the form of private prosecution.
- A plea agreement between the prosecutor and the accused for:
  - Minor crimes, crimes with average weight, and serious crimes.
  - Particularly serious crimes investigated by the National Anti-Corruption Bureau (in relation to corruption-related offenses by public officials) when the accused reveals other suspects in committing the similar crime which can be proven by evidence.
  - Particularly serious crimes committed by prior conspiracy by a group of individuals, an organized group or criminal organization or terrorist group, provided that they are exposed by a suspect who is not the head of such group or organization and that the suspect reveals the criminal acts of other members of the group or of other crimes committed by the group or organization provided that such information will be supported by evidence.

Criminal liability (currently, in the form of penalty fines of up to UAH1,275,000 (around US$45,535), confiscation of property, and compulsory liquidation of the entity) can also apply to companies. In such cases, a settlement agreement or a plea agreement cannot be concluded.

A plea agreement requires the prior consent of the person whose private interests have been damaged. The agreement has to be approved by the competent court.



18. What types of penalties (e.g., fines, imprisonment, disgorgement, or debarment) could companies, directors, officers, or employees face for misconduct of (other) individuals of the company?

Under Ukrainian law, directors can face liability for tax evasion (fine up to UAH425,000 (around US$15,178) with deprivation of the right to hold specific posts for up to three years and confiscation of assets), forgery of the documents submitted for the state registration of a legal entity (fine up to UAH34,000 (around US$1,214) or custodial restraint for five years with deprivation of the right to hold specific posts for up to three years), contentious insolvency (fine up to UAH51,000 (around US$1,821) with deprivation of the right to hold specific posts for up to three years), and violation of labor law.

Furthermore, directors can face liability claims from shareholders based on improper management, which causes damage to the company. This is based on the director's obligation to act in the best interests of the company.

Criminal liability for the company can be based on employees' (authorized representatives') misconduct benefitting the company. These offenses may include, for example:

- Bribery of public officials or private companies.
- Money laundering.
- Terrorist financing.

Criminal liability measures for private companies include a fine up to UAH1,275,000 (around US$45,535), confiscation of property, or compulsory liquidation of the entity. The private company also has to compensate for all losses, and, in case of a corruption offense, the amount of illegal benefit received or which could have been received as a result of the offense.

Public authorities, public entities financed from state or local budgets, or by international organizations are as legal persons exempted from certain criminal liabilities. However, their public officials and executives can, as individuals, be penalized for committing corruption offenses, including potential imprisonment of up to 12 years.

19. Can penalties for companies, their directors, officers, or employees be reduced or suspended if the company can demonstrate an efficient compliance system? Does this only apply in cases where efficient compliance systems have been implemented prior to the alleged misconduct?

Yes, according to Ukrainian legislation, the existence of an implemented compliance system (in other words, measures taken by the company to prevent crime) may reduce potential penalties. However, Ukraine has no strong case law or administrative regulations for the courts on how to take an existing compliance system into account. Therefore, as existing compliance system may influence the liability decision of the court but more on a subjective level of the judge.

20. Please briefly describe any investigation trends in your country (e.g., recent case law, upcoming legislative changes, or special public attention on certain topics).

Recently, the Ukrainian Parliament has adopted the updated Law of Ukraine on Prevention and Counteraction of the Legalization (Laundering) of the Proceeds from Crime, Terrorist Financing, and Financing of the Proliferation of Weapons of Mass Destruction. The new law ensures the implementation of international standards.

At the same time, the number of internal investigations is further increasing. For example, corruption offenses committed by the former top-management of the Ukrainian state concern Ukroboronprom are now subject to an internal investigation. Finally, Ukrainian subsidiaries of global companies and Ukrainian individuals have, in recent years, become subjects of official FCPA investigations relating to activities in Ukraine. The most notable examples are ADM, Dmytro Firtash, Teva, and IBM.

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Ario Dehghani has over 11 years of professional experience in the fields of compliance, data protection and privacy, white-collar investigations, and EU law. Prior to joining Sayenko Kharenko, Ario worked for more than seven years at the Hogan Lovells Munich office, where he focused on white-collar, compliance, and internal investigations.

Ario Dehghani is one of the most experienced experts in Ukraine in preventing, identifying, eliminating and mitigating compliance risks at both national and global levels. He advises clients on all types of compliance matters and regularly handles sophisticated internal investigations related to, amongst others, FCPA and UK Bribery Act issues. His areas of expertise cover anti-corruption, anti-money laundering, sanctions, data protection, regulatory, and product compliance matters. Ario is also supporting local and international clients regarding pre-acquisition asset evaluations from a compliance perspective.

He has extensive experience across a variety of sectors, including the chemical, life science, electronic, IT, automotive, consumer goods and energy sectors.

Ario provides courses on German private and public law and holds open lectures on Compliance and EU law topics.

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Before joining Sayenko Kharenko, Volodymyr worked as legal counsel for two of the leading Ukrainian national retailers of optical products and for Redcliffe Partners. During his previous work, he actively accompanied in the establishment of compliance systems, including, e.g., compliance risk-assessment, regulatory issues in the field of production and trade of goods.

Volodymyr conducts Ph.D. research in International Private Law in the field of complex M&A transactions.

Uzbekistan

Contributed by Kosta Legal

	Corporate liability	Public bribery	Commercial bribery	Extraterritorial applicability of criminal laws	Adequate procedures defense
Yes		✓	✓	✓	
No	✗				✗

1. What are the laws relating to anti-corruption, bribery, and money laundering in your country?

In the Republic of Uzbekistan, the following laws and regulations apply:

- The Anti-Corruption Law (Law No. O'RQ-419 *O'zbekiston Respublikasining "Korrupsiyaga qarshi kurashish to'g'risida"gi Qonuni*).
- The Law on Counteracting Legalization of the Proceeds of Crime, Terrorism Financing and Financing Proliferation of Weapons of Mass Destruction (Law No. 660-II *O'zbekiston Respublikasining "Jinoiy faoliyatdan olingan daromadlarni legallashtirishga, terrorizmni moliyalashtirishga va ommaviy qirg'in qurolini tarqatishni moliyalashtirishga qarshi kurashish to'g'risida"gi Qonuni*).
- Articles 61^1, 193^1 and 193^2 of the Code of the Republic of Uzbekistan on Administrative Liability (*O'zbekiston Respublikasining Ma'muriy javobgarlik to'g'risidagi kodeksi*) establishing administrative liability for some types of corruption.
- Article 179^3 of the Code of the Republic of Uzbekistan on Administrative Liability establishing administrative liability for a violation of the law on counteracting legalization of the proceeds of crime, terrorism financing and financing proliferation of weapons of mass destruction.
- Articles 192^9, 192^{10} and Articles 210 to 214 of the Criminal Code of the Republic of Uzbekistan (*O'zbekiston Respublikasining Jinoyat kodeksi*) criminalizing different types of corruption.
- Articles 171, 243 of the Uzbek Criminal Code criminalizing money laundering.

2. Do the following persons or bodies have the right to be informed, or is the company obliged to inform the following persons/bodies, about an internal investigation before it is commenced? Do they have the right to participate in the investigation (e.g., in interviews)?

a. Employee representative bodies, such as a works council or union.

There is no legal obligation to inform employee representative bodies of internal investigations, except for cases of industrial accidents or instances where the health of employees has been injured. For these cases, Uzbek labor laws provide a specific order, in accordance with which, employee representative bodies shall be informed of and participate in internal investigations.

Notwithstanding this, the internal compliance policies of a company may regulate general notification and participation procedures for employee representative bodies in relation to internal investigations.

b. Data protection officer or data privacy authority.

Not required by law.

c. Other local authorities.

Not required by law

What are the consequences of non-compliance?

Where the internal compliance policies of a company stipulate that the employee representative bodies have the right to be informed and/or participate in internal investigations, and where an employer or an authorized person, impedes on that right, they may face administrative liability and fines.

3. Do employees have a duty to support the investigation, for instance by participating in interviews? Is there anything a company can do to require employees to support an investigation (e.g., advance consents)? Can companies impose disciplinary measures if an employee refuses to cooperate?

Under Uzbek laws, employees are not under a duty to support internal investigations. However, where the company's internal policies place an obligation on employees to support internal investigations, the employee may face disciplinary sanctions if they fail to comply.

4. Can any labor law deadlines or statute of limitations be triggered, or any rights to sanction employees be waived, by investigative actions? How can this be avoided?

Under Uzbek laws internal investigations do not trigger any labor law deadlines or statutes of limitations, nor do they waive the right to sanction employees.

As a general rule under the Uzbek Labor Code, disciplinary measures for violation of labor discipline must be imposed and applied by the employer in relation to employees within one month from the date the misconduct was detected.

Disciplinary measures cannot be imposed more than six months from the date the misconduct was committed. However, where the misconduct was detected during an inspection by the relevant state authorities, disciplinary measure must be imposed within two years.

5. Are there relevant data privacy laws, state secret laws, or blocking statutes in your country that have to be taken into account before:

a. Conducting interviews?

In accordance with the provisions of the Law on Personal Data (No. O'RQ-547 *O'zbekiston Respublikasining "Shaxsga doir ma'lumotlar to'g'risida"gi Qonuni*), where an interviewer obtains personal data (recorded on electronic, paper and/or in any other tangible carriers), the following conditions must be taken into account:

i. personal data cannot be collected and processed without the prior informed consent of the owner;

ii. personal data can only be used for the purposes for which it was obtained;

iii. the owner of the personal data may request to have this data classified as confidential; and

iv. the owner may request updates and clarifications on the use of their personal data.

A person who violates personal data laws can be subject to administrative or criminal liability.

b. Reviewing emails?

The Constitution of the Republic of Uzbekistan (*O'zbekiston Respublikasining Konstitutsiyasi*) notes that everyone is entitled to protection against interference with his privacy, including privacy of correspondence. Therefore, reviewing personal emails without prior consent of the owner is considered a violation can lead to administrative or criminal liability.

There is a lack of regulation specifically focusing on the utilization and review of employees' corporate emails by an employer. Therefore, a company's internal policies may contain appropriate provisions regarding the employer's right to access employees' corporate emails. Subsequently, these policies may also prohibit the personal use of corporate emails.

c. Collecting (electronic) documents and/or other information?

The same rules mentioned in section (a) apply to documents and/or other information which contains personal data.

Otherwise, the requirements of the Law on Protection of State Secrets (No. 848-XII *O'zbekiston Respublikasining "Davlat sirlarini saqlash to'g'risida"gi Qonuni*) should be taken into account when collecting any information, which constitute state secrets. Notably, the disclosure or conveyance of state secrets shall lead to criminal liability.

d. Analyzing accounting and/or other mere business databases?

In accordance with the Law on Financial Accounting (No. 279-I *O'zbekiston Respublikasining "Buxgalteriya hisobi to'g'risida"gi Qonuni*), accounting information is deemed to be confidential. Thus, anyone who has access to such information must keep its confidentiality.

Any breach of confidentiality shall lead to administrative or criminal liability.

6. Do any specific procedures need to be considered in case a whistle-blower report sets off an internal investigation (e.g., for whistle-blower protection)?

Uzbek laws do not provide any specific procedures which need to be considered in cases where a whistle-blower report sets off an investigation.

Nevertheless, individuals, and legal entities have the right to report corruption offenses to appropriate state authorities. Under Anti-Corruption Law No. O'RQ-419, such persons are protected by the state.

7. Before conducting employee interviews in your country, must the interviewee:

a. Receive written instructions?

Not required by law.

b. Be informed that he/she must not make statements that would mean any kind of self-incrimination?

Not required by law unless the interview is conducted in the process of criminal investigation.

c. Be informed that the lawyer attending the interview is the lawyer for the company and not the lawyer for the interviewee (so-called Upjohn warning)?

Not required by law.

d. Be informed that they have the right to have their lawyer attend?

Not required by law unless the interview is conducted in the process of criminal investigation.

e. Be informed that they have the right to have a representative from the works council (or other employee representative body) attend?

Not required by law. However, a company's internal documents (policies, collective agreement) may grant employees the right to have a representative from the works council or other employee representative body present.

f. Be informed that data may be transferred across borders (in particular to the United States of America)?

Where data obtained is considered to be personal, its owner shall be informed that it may be transferred across borders.

In general, as per the Law on Personal Data No. O'RQ-547, personal data (recorded on electronic, paper and/or other tangible carriers) cannot be collected and processed (including transferred across borders) without the owner's prior informed consent and can only be used for the purposes for which it was collected.

g. Sign a data privacy waiver?

Uzbek laws do not require an interviewee to sign a data privacy waiver before being interviewed.

Nevertheless, as previously mentioned, an interviewer is prohibited from collecting and processing the interviewee's personal data without their prior informed consent.

h. Be informed that the information gathered might be passed on to third parties, including local or foreign authorities?

Where information gathered is considered to be personal data, it cannot be passed on to third parties unless the owner of the personal data is informed, and his/her consent is obtained.

i. Be informed that written notes will be taken?

Unless the notes contain the employee's personal data, employers are not obligated to inform employees that written notes will be taken during an interview.

8. Are document-hold notices or document-retention notices allowed in your country? Are there any specific rules that need to be followed (point in time, form, sender, addressees)?

There is no particular regulation in Uzbekistan on document hold or document retention notices.

9. Can attorney-client privilege (legal advice privilege) be claimed over findings of the internal investigation? What steps may be taken to ensure privilege is maintained?

In accordance with the Law on Advocacy (No. 349-I *O'zbekiston Respublikasining "Advokatura to'g'risida"gi Qonuni*) and the Law on Guarantees of Advocacy and Social Protection of Attorneys (No. 721-I *O'zbekiston Respublikasining "Advokatlik faoliyatining kafolatlari va advokatlarning ijtimoiy himoyasi to'g'risida"gi Qonuni*), all information and material received by an attorney from its client are the subject to advocacy secret (attorney-client privilege), thus, attorney-client privilege may apply to the findings of an internal investigation.

In order to claim attorney-client privilege an external attorney should be engaged under a contractual agreement for the provision of legal assistance. Under the agreement, the attorney should be instructed to conduct the investigation and be provided with all the evidence, findings, and documents produced during the investigation.

10. Can attorney-client privilege also apply to in-house counsel in your country?

As per Uzbek laws attorney-client privilege does not apply to in-house counsel.

11. Are any early notifications required when starting an investigation?

a. To insurance companies (D&O insurance, etc.) to avoid losing insurance coverage.

Not required by law but early notifications might be required under insurance contracts and policies.

b. To business partners (e.g., banks and creditors).

Not required by law but it might be required by way of contract.

c. To shareholders.

Not required by law but it might be required under a company's constitutional documents.

d. To authorities.

Not required by law.

12. Are there any other immediate measures that have to be taken in your country, or would be expected by the authorities once an investigation starts, e.g., any particular immediate reaction to the alleged conduct?

In Uzbekistan, there are no legal requirements or guidelines regarding the performance of internal investigations.

13. Is there a duty to self-report the discovered misconduct to prosecuting authorities?

The Uzbek Criminal Code provides for a criminal liability of individuals for:

i. a failure to report a conclusively known serious or especially serious crime being prepared or having been committed; and

ii. a failure to report a conclusively known impending or committed terrorist crime.

Moreover, certain organizations (such as banks, exchange members, professional securities market participants, insurance companies, law firms etc.) engaged in monetary operations or operations with other property, are obliged to report suspicious transactions to the Department for Combating Tax, Currency Crimes and Legalization of Criminal Proceeds under the General Prosecutor's Office of Uzbekistan. This includes cases where:

i. there are suspicions that a transaction is aimed at legitimizing the proceeds of crime or terrorism financing, or

ii. one of the parties to the transaction is involved or suspected to be participating in terrorist activity.

In turn, employees of state authorities are obliged to notify their supervisor or law enforcement agencies of all cases where a person orders or incites them to commit corrupt offenses. Employees should also notify their supervisor or law enforcement if another state authority employee commits such offenses.

14. If local prosecuting authorities become aware of an internal investigation, would they interfere in it or ask for specific steps to be followed?

Prosecuting authorities shall start to act (i.e., carry out preliminary inquiry or formal criminal investigation), only when they become aware of a crime committed or being prepared. Reasons to act shall consist of:

i. complaints filed by individuals;
ii. communications submitted by enterprises, organizations, institutions, public associations, and officials;
iii. communications in mass media;
iv. discovery of information and marks, showing indicia of an offense, immediately by an inquiry agency, inquiry officer, investigator, prosecutor, or court, or
v. a voluntary surrender.

In such cases, information and circumstances revealed during an internal investigation might be investigated by prosecuting authorities.

15. Please describe the legal prerequisites for search warrants or dawn raids on companies in your country. If the prerequisites are not fulfilled, can the evidence gathered still be used against the company?

In accordance with the Criminal Procedure Code of the Republic of Uzbekistan (*O'zbekiston Respublikasining Jinoyat-protsessual kodeksi*), search and seizure can be conducted by resolution of the inquiry officer or investigator and with the sanction of a prosecutor. The ruling of the court may also authorize the inquiry body or the investigator to conduct a search or seizure.

In urgent cases, a search may be performed without a prosecutor's sanction, however, the prosecutor must be informed of the search within 24 hours. The investigator or inquiry officer must substantiate the urgency of the case to the prosecutor.

A resolution or ruling on conducting a search or seizure shall indicate who should be subject to a search and seizure, where it should take place and what items and documents must be detected and seized.

An attesting witness and, if required, a specialist or translator should participate in the search and seizure. The search and seizure within the premises of enterprises, institutions, organizations, and military units shall be conducted in the presence of representatives thereof.

Where there has been a violation of the search and seizure procedures, and evidence is found or collected in the course of the search and seizure, this evidence is of no legal value.

16. Would voluntary self-disclosure or cooperation with state authorities help avoid or mitigate liability? What are the requirements to obtain the cooperation credit?

The Uzbek Criminal Code provides a non-exhaustive list of mitigating circumstances, which shall be taken into account by courts when administering a penalty. Such circumstances include voluntary surrender, active repentance, assistance in crime detection, and voluntary expiation of a harm.

Thus, voluntary self-disclosure and/or cooperation with state authorities may help avoid or mitigate liability, if such circumstances are considered by the court as mitigating for particular cases.

17. Are deals, non-prosecution agreements, or deferred prosecution agreements available and common for corporations in your jurisdiction?

Non-prosecution agreements and deferred prosecution agreements are not available under Uzbek laws.

18. What types of penalties (e.g., fines, imprisonment, disgorgement, or debarment) could companies, directors, officers, or employees face for misconduct of (other) individuals of the company?

Uzbek laws do not provide for liability of companies, directors, or employees for misconduct of other individuals of the company.

The only exception is that, under the Uzbek Civil Code (*O'zbekiston Respublikasining Fuqarolik kodeksi*), the employer shall redress the injury inflicted by its employee during the performance of official labor duties.

19. Can penalties for companies, their directors, officers, or employees be reduced or suspended if the company can demonstrate an efficient compliance system? Does this only apply in cases where efficient compliance systems have been implemented prior to the alleged misconduct?

There is no particular regulation on this issue under the Uzbek law.

20. Please briefly describe any investigation trends in your country (e.g., recent case law, upcoming legislative changes, or special public attention on certain topics).

Being a participant of the Istanbul Anti-Corruption Action Plan ("**Action Plan**"), the Republic of Uzbekistan has undertaken a number of key reforms in the area of anti-corruption policies. For instance, in order to be compliant with the Action Plan recommendations, and fully comply with the United Nations Convention against Corruption, a statutory definition of certain types of investigative measures was introduced.

Uzbekistan is moving towards compliance with new recommendations, including:

i. establishing laws on the anonymous reporting (whistle-blowing) of possible corruption crimes that are verifiable;

ii. raising the effectiveness of the use of financial monitoring information for initiating criminal cases on corruption, ensuring a wider use of financial monitoring data in criminal prosecution of such crimes;

iii. providing investigative authorities engaged in financial investigations, direct access to the databases of tax and customs authorities, property registries – subject to the protection of personal data, and

iv. expanding the provisions of the Uzbek Criminal Procedure Code on international cooperation in criminal matters, including regulating the procedure for conducting interrogations under the request of foreign law enforcement authorities, including interrogations by means of a video or telephone conference;

v. expanding the provisions of the Uzbek Criminal Procedure Code on the procedure for tracing, arresting and confiscating assets, on the procedure for creating and operating joint investigative teams and providing grounds for refusal to provide mutual legal assistance.

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Vazgen Grigoryan is one of the Uzbekistan's most highly regarded litigators, financial, and corporate law practitioners. He has vast experience in advising clients on complex cross-border commercial litigation cases, regulatory enforcement proceedings and multi-jurisdictional investigations, corporate restructurings and insolvency, as well as bank financing. Vazgen's work over the past 20 years has covered a full range of corporate and financial litigation matters, including acting for foreign investment banks in disputes arising out of using financial instruments and letters of credit and advising the world's largest multinational corporations in investment disputes involving the Uzbek state.

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